

ADDENDUM TO THE
INITIAL STATEMENT OF REASONS

Note that only sections modified are included in this addendum. These regulations were noticed on July 14, 2017, and a public hearing held on August 30, 2017. Testimony was received during the 45-day comment period ending at 5:00 p.m., August 30, 2017. CDSS considered the testimony and changes were made to the proposed regulations.

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 87101(g)(1)

Specific Purpose:

This section adds a definition for the term "gender expression" to the regulations.

Factual Basis:

This section adds a definition for "gender expression" and is necessary for consistency with the definition for this term in Health and Safety Code section 1439.50(a). The definition applies to the Lesbian, Gay, Bisexual, and Transgender (LGBT) Residents' Bill of Rights enacted by Senate Bill (SB) 219 (Chapter 483, Statutes of 2017), which applies to RCFEs as specified in Health and Safety Code section 1569.318. The definition reads, " 'Gender expression' has the same meaning as defined in Section 51 of the Civil Code."

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the definition for greater ease of understanding by licensees. The Department is clarifying the definition by including text based on Civil Code section 51, with modifications, in the definition. Civil Code section 51 reads " 'Gender expression' means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." CDSS is removing the words "gender-related" since they include a word from the term being defined, inserting the words "these are" before the phrase "stereotypically associated with the person's sex assigned at birth," and rearranging the phrase "assigned sex" to read "sex assigned."

Section 87101(g)(2)

Specific Purpose:

This section adds a definition for the term "gender identity" to the regulations.

Factual Basis:

This section adds a definition for "gender identity" and is necessary for consistency with the definition for this term in Health and Safety Code section 1439.50(b). This definition applies to the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017), which applies to RCFEs as specified in Health and Safety Code section 1569.318. The definition reads, " 'Gender identity' means a person's identity based on the individual's stated gender identity, without regard to whether the self-identified gender accords with the individual's physical appearance, surgical history, genitalia, legal sex, sex assigned at birth, or name and sex, as it appears in medical records, and without regard to any contrary statement by any other person, including a family member, conservator, or legal representative. An individual who lacks the present ability to communicate his or her gender identity shall retain the gender identity most recently expressed by that individual."

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the definition for greater ease of understanding by licensees. The Department is clarifying the first sentence in the definition by replacing the phrase "identity based on the individual's stated gender identity" with the phrase "stated identification with a sex"; replacing the phrase "without regard to" with the phrase "regardless of"; replacing the phrase "self-identified gender accords" with the phrase "stated sex is consistent"; replacing the word "individual's" with the word "person's"; replacing the phrase "it appears" with the phrase "they appear"; and rearranging the phrase "any contrary statement by..." to read "any statement by...that is contrary." The Department is clarifying the second sentence in the definition by replacing the word "individual" with the word "person"; removing the word "present" from the phrase "the ability"; and replacing the phrase "shall retain" with the word "retains".

Section 87101(g)(3)

Specific Purpose:

This section adds a definition for the term "gender-nonconforming" to the regulations.

Factual Basis:

This section adds a definition for "gender-nonconforming" and is necessary for consistency with the definition for this term in Health and Safety Code section 1439.50(c). This definition applies to the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017), which applies to RCFEs as specified in Health and Safety Code section 1569.318. The definition reads, " 'Gender-nonconforming' means a person whose gender expression does not conform to stereotypical expectations of how a man or woman should appear or act."

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the definition for greater ease of understanding by licensees. The Department is clarifying the definition by replacing the word "act" with the word "behave."

Section 87101(g)(4) is Renumbered from Section 87101(g)(1)

Specific Purpose/Factual Basis:

Section 87101(g)(1) is renumbered to Section 87101(g)(4) due to adopting Section 87101(g)(1) through (g)(3) above. No changes are being proposed to the regulation text.

Section 87101(l)(1)

Specific Purpose:

This section adds a definition for the term "LGBT" to the regulations.

Factual Basis:

This section adds a definition for "LGBT" and is necessary for consistency with the definition for this term in Health and Safety Code section 1439.50(d). This definition applies to the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017), which applies to RCFEs as specified in Health and Safety Code section 1569.318. The definition reads, " 'LGBT' means lesbian, gay, bisexual, or transgender."

Sections 87101(l)(2) through (l)(5) is Renumbered from Sections 87101(l)(1) through (l)(4)

Specific Purpose/Factual Basis:

Sections 87101(l)(1) through (l)(4) are renumbered to Sections 87101(l)(2) through (l)(5) due to adopting Section 87101(l)(1) above.

Amendment of Section 87101(l)(2) is necessary to replace the phrase "is defined in Health and Health and Safety Code section 1569.2(g)" with the phrase "means a basic permit to operate a residential care facility for the elderly." This definition spells out and is consistent with the definition in Health and Safety Code section 1569.2(j), which has been renumbered from subsection (g) in statute.

Section 87101(p)(7)

Specific Purpose:

This section adds a definition for the term "publicly operated facility" to the regulations.

Factual Basis:

This section adds a definition for "publicly operated facility" and is necessary to provide clarity to assist a licensee in understanding what a publicly operated facility is as well as how such a facility differs from a privately operated facility. The definition for "publicly operated facility" is consistent with the definition for "applicant" in Section 87101(a)(9) and "licensee" in Section 87101(l)(3).

An "applicant" is defined in Section 87101(a)(9) as including a "...county, city, public agency or other government entity that has made application for a residential care facility for the elderly license...." A "licensee" is defined in Section 87101(l)(3) as including a "...county having the authority and responsibility for the operation of a licensed facility." Both definitions refer to government entities that would apply to be licensed, or be licensed, to operate a residential care facility for the elderly that would be publicly operated.

The term "privately operated facility" is not defined since it is self-evident from the exclusion of an individual, firm, partnership, association, or corporation from the definition of publicly operated facility that all other facilities would be privately operated.

Section 87101(t)(3)

Specific Purpose:

This section adds a definition for the term "transgender" to the regulations.

Factual Basis:

This section adds a definition for "transgender" and is necessary for consistency with the definition for this term in Health and Safety Code section 1439.50(h). This definition applies to the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017), which applies to RCFEs as specified in Health and Safety Code section 1569.318.

The definition reads, " 'Transgender' means a person whose gender identity differs from the person's assigned or presumed sex at birth."

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the definition for greater ease of understanding by licensees. The Department is clarifying the definition by replacing the word "differs" with the phrase "is different".

Section 87101(t)(4)

Specific Purpose:

This section adds a definition for the term "transition" to the regulations.

Factual Basis:

This section adds a definition for "transition" and is necessary for consistency with the definition for this term in Health and Safety Code section 1439.50(i). This definition applies to the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017), which applies to RCFEs as specified in Health and Safety Code section 1569.318.

The definition reads, " 'Transition' means to undergo a process by which a person changes physical sex characteristics or gender expression to match the person's inner sense of being male or female. This process may include, among other things, a name change, a change in preferred pronouns, and a change in social gender expression, as indicated by hairstyle, clothing, and restroom use. Transition may or may not include hormone use and surgery."

Section 87109(b) and Handbook Section 87109(b)

Specific Purpose:

This section is amended to revise the requirement that licensees notify specified parties at least sixty (60) days before the effective date of any change in ownership of a RCFE to at least thirty (30) days prior to such a change.

Factual Basis:

Amendment of this section is necessary to clarify the timeframe for licensees to provide notification of change in ownership in regulation. It is also necessary for consistency with statute. Health and Safety Code section 1569.191(a)(1), amended in statute by Assembly Bill (AB) 878 (Chapter 526, Statutes of 1993), requires that licensees provide written notice to CDSS and residents or their legal representatives of the licensee's intent to sell a RCFE at least thirty (30) days prior to transfer of the property or business.

Modification:

Following the July 27, 2016 public hearing, CDSS is making a change to this section for clarity purposes.

CDSS is deleting the phrase "...the effective date that any change in ownership of the facility occurs as required by..." and adding the phrase "...any of the events specified in..." to clarify that the specified timeframe applies to any of the events, i.e., sale or transfer of the property or business or a bona fide offer is made that is expected to result in the pending sale or transfer of a RCFE, specified in Health and Safety Code section 1569.191(a)(1).

Second Modification:

Following the second public hearing, CDSS is making a change to this section for clarity purposes.

CDSS is deleting the pre-hearing phrase "...any of the events specified in Health and Safety Code section 1569.191(a)(1)" and adding the phrase, "... the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer." post-hearing to specify events that trigger the need to provide notice, and for consistency with notification timeframes, as specified in Health and Safety Code section 1569.191(a)(1).

CDSS is also adding the phrase "as specified in Health and Safety Code Section 1569.191" and the reference in handbook for consistency with statute. Handbook language is also added for ease of the reader, to show

text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.191 specifies requirements, including timeframes, that apply to the sale of a licensed facility. There are grammatical changes to add a comma after the word "longer" and before the phrase "as specified" and a period after the reference to "Section 1569.191."

CDSS is additionally deleting the pre-hearing phrase "responsible persons" and adding the word "representative" post-hearing for consistency with use of the word "representative" in other sections addressed by this regulation package.

Title Section 87468

Specific Purpose/Factual Basis:

The phrase "of residents" is being added to the title of the section. CDSS is adding this phrase to clarify that the section applies to the personal rights of residents in RCFEs.

Section 87468(a)

Specific Purpose:

This section is amended to 1) replace "Each resident" with "Residents in residential care facilities for the elderly" and 2) replace "the following:" with "those listed below."

Factual Basis:

This regulatory change is necessary to clarify that personal rights are provided to all residents in RCFEs as specified in Section 87468.

Modification:

Following the second public hearing, CDSS is making a change to this section for clarity purposes.

CDSS is deleting the pre-hearing word "below" and adding the phrase, "...in Sections 87468.1 or 87468.2, as applicable to the facility, and those listed in Section 87468.3." post-hearing to specify where resident rights are listed in regulations.

Section 87468 is maintained post-hearing as a lead section to address general requirements in regard to personal rights of residents in all RCFEs.

The list of personal rights in Section 87468 is removed and relocated to a new post-hearing Section 87468.1 to address personal rights for residents in publicly operated RCFEs. A list of personal rights for residents in privately operated RCFEs, based on personal rights in Health and Safety Code section 1569.269, added by Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014), is added in a new post-hearing Section 87468.2.

A list of personal rights for residents in all RCFEs, based on personal rights in Health and Safety Code sections 1439.51 and applicable to RCFEs as specified in Health and Safety Code section 1569.318, added by SB 219 (Chapter 483, Statutes of 2017), is added in a new post-hearing Section 87468.3.

Section 87468(a)(1)

Specific Purpose:

This section is adopted to add "Residents in all facilities shall have the following rights."

Factual Basis:

This regulatory change is necessary to clarify that residents in all facilities continue to be afforded the personal rights in existing regulations. Addition of regulation is necessary to comply with Health and Safety Code sections 1569.265 and 1569.267, added by AB 2171 (Chapter 702, Statutes of 2014). These statutes establish personal rights for residents in privately operated RCFEs and specifies that these rights are to be honored in addition to those addressed by existing regulations. These changes to statute do not change the requirement that personal rights in existing regulations continue to apply to residents in publicly operated RCFEs.

The remainder of these regulations comprise existing personal rights in Section 87468 that have applied, and will continue to apply as amended, to both privately operated and publicly operated RCFEs.

Modification:

Following the second public hearing, CDSS is making changes to this section for clarity purposes.

CDSS is removing the pre-hearing subsection (a)(1) and sentence "Residents in all facilities shall have the following rights." A list of personal rights for residents in publicly operated RCFEs, based on personal rights in the existing Section 87468, has been moved to and is now located in a new post-hearing Section 87468.1.

Sections 87468(a)(1)(A) through (a)(1)(J) are Renumbered from Sections 87468(a)(1) through (a)(10)

Specific Purpose/Factual Basis:

Sections 87468(a)(1) through (a)(18) are renumbered to Sections 87468(a)(1)(A) through (a)(1)(R) to accommodate the adoption of Section 87468(a)(1) above.

Amendment of **Section 87468(a)(1)(A)** is necessary to replace the phrase “his or her” in existing regulatory language with the word “their” for clarity. CDSS is using the gender-neutral reference “their” to apply personal rights equally to residents in RCFEs who may identify as male or female, as neither male or female, or as both male and female.

Section 87468(a)(1)(D) is being amended post-hearing to restore existing language to the personal right so that it reads: "To be informed by the licensee of the provisions of law regarding complaints and of procedures to confidentially register complaints, including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency." It is also being amended post-hearing to remove "confidentially contact the Community Care Licensing Division of the California Department of Social Services, the long-term care ombudsman, or both, regarding grievances against the facility" and adopt the right "...to contact the agencies specified in Health and Safety Code section 1569.885."

This regulatory change is necessary to clarify that residents in RCFEs continue to have the right to be informed of law and procedures in regard to complaints. This regulation is also necessary to establish a personal right that complies with and references Health and Safety Code section 1569.885(c), added to statute by SB 211 (Chapter 409, Statutes of 2003). This statute requires that residents be informed of, and have, the right to contact specified agencies, which include the Community Care Licensing Division of the California Department of Social Services and the long-term care ombudsman, to make complaints in regard to a RCFE. It is not necessary to repeat the content of statute in regulation since the requirement is clear in the statute, which is incorporated by reference in regulation.

Amendment of **Section 87468(a)(1)(E)** is necessary to replace the phrase “his or her” in existing regulatory language with the word “their,” insert the phrase “either in or outside the facility,” and remove the sentence “Attendance at religious services, either in or outside the facility, shall be on a completely voluntary basis.” This regulatory change is necessary for clarity. CDSS is using the gender-neutral reference to “their” to apply personal rights equally to residents in RCFEs who may identify as male or female, as neither male or female, or as both male and female. The second sentence of the regulation is unnecessary since attending religious services on a voluntary basis is the same as attending religious services of choice in the first sentence. Residents continue to be permitted to attend religious services or activities either in or outside the RCFE.

Amendment of **Section 87468(a)(1)(F)** is necessary to move the sentence “This does not prohibit the establishment of house rules, such as the locking of doors at night, for the protection of residents; nor does it prohibit, with permission of the licensing agency, the barring of windows against intruders” to adopt **Subsection (a)(1)(F)(1.)** of this section. This regulatory change is necessary for clarity. It separates the conditions of not prohibiting house rules or other precautions that apply to the personal right from the personal right. The personal right is permitted to stand alone and be followed by the conditions that apply.

Amendments to **Sections 87468(a)(1)(G) through (a)(1)(I)** are necessary to replace the phrase “his or her” in existing regulatory language with the word “their.” They are also being amended to replace the phrase “family and responsible persons” with the word “representatives.” In addition, **Sections 87468(a)(1)(H) and (a)(1)(I)** are amended for clarity to replace “facility” with “licensee” because a licensee, not a RCFE, which is an inanimate object, can establish and provide information about policy.

The regulatory change to use the gender-neutral reference to “their” is necessary for clarity. CDSS is applying personal rights equally to residents in RCFEs who may identify as male or female, as neither male or female, or as both male and female.

CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that residents’ representatives be able to visit a RCFE, informed about care, and have communications answered for consistency with existing regulations. Section 87101 defines “representative” as “an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident’s valid advance health care directive, the resident’s spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law.” People in these roles act on behalf of residents and may have a significant role in determining residents’ care and services.

The regulatory change to refer to “licensee” is necessary for clarity. A licensee, not a RCFE, which is an inanimate object, can inform residents’ representatives about care and services.

Amendment of **Section 87468(a)(1)(J)** is necessary to replace “facility’s” with “licensee’s” for clarity. A licensee, not a RCFE, which is an inanimate object, can establish and provide information about policy.

Modification:

Following the second public hearing, CDSS is making changes to these sections for clarity purposes.

CDSS is removing the pre-hearing subsections (a)(1)(A) through (a)(1)(J) and enumerated personal rights in those subsections. A list of personal rights for residents in publicly operated RCFEs, based on personal rights in the existing Section 87468, has been moved to and is now located in a new post-hearing Section 87468.1.

Handbook Section 87468(a)(1)(J)

Specific Purpose/Factual Basis:

This handbook section is removed post-hearing since the handbooked Health and Safety Code section 1569.313 is referenced in Section 87468(a)(1)(J). Licensees can find the full text of this statute online at [California Legislative Information \(http://leginfo.legislature.ca.gov/faces/codes.xhtml\)](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

Modification:

Following the second public hearing, CDSS is moving the handbook section to a new post-hearing Section 87468.1(a)(10) to correspond with the personal right of residents to be informed of the licensee's policy concerning visits and other communications with residents, according to Health and Safety Code section 1569.313. This personal right for residents in publicly operated RCFEs, based on the personal right in the existing Section 87468, has been moved to and is now located in a new post-hearing Section 87468.1.

Sections 87468(a)(1)(K) through (a)(1)(R) are Renumbered from Sections 87468(a)(11) through (a)(18)

Specific Purpose/Factual Basis:

Sections 87468(a)(11) through (a)(18) are renumbered to Sections 87468(a)(1)(K) through (a)(1)(R) to accommodate the adoption of Section 87468(a)(1) above.

Amendment of **Sections 87468(a)(1)(K) and (a)(1)(L)** are necessary to replace the phrase "his or her" in existing regulatory language with the word "their" for clarity. CDSS is using the gender-neutral reference to "their" to apply personal rights equally to residents in RCFEs who may identify as male or female, as neither male or female, or as both male and female. There is a grammatical change to add a comma between "representatives" and "permitted" in **Section 87468(a)(1)(K)**.

Amendment of **Section 87468(a)(1)(N)** is necessary to move the sentence “The licensee may require reimbursement for long distance calls” to adopt **Subsection (a)(1)(N)(1.)** of this section. This regulatory change is necessary for clarity. It separates the condition of permitting a licensee to require reimbursement for long distance calls that applies to the personal right from the personal right. The personal right is permitted to stand alone and be followed by the condition that applies.

There is a grammatical change to remove the comma between “medical care” and “or other services” in **Section 87468(a)(1)(P)**.

Modification:

Following the second public hearing, CDSS is making changes to these sections for clarity purposes.

CDSS is removing pre-hearing subsections (a)(1)(K) through (a)(1)(R) and the enumerated personal rights in those subsections. A list of personal rights for residents in publicly operated RCFEs, based on personal rights in the existing Section 87468, has been moved to and is now located in a new post-hearing Section 87468.1.

Section 87468(a)(2)

Specific Purpose:

This section is adopted to clarify that residents in privately operated RCFEs are afforded personal rights in statute, is amended post-hearing to 1) remove the word “only” and 2) replace the word “additional” with the word “also.”

Factual Basis:

This regulatory change is necessary to clarify that residents in privately operated RCFEs are to be afforded personal rights in Health and Safety Code section 1569.269. Adoption of this regulation is necessary to comply with Health and Safety Code section 1569.269, added by AB 2171 (Chapter 702, Statutes of 2014). This statute establishes 30 personal rights for residents in RCFEs, some of which are not addressed by existing regulations, and applies these rights to residents in privately operated RCFEs. These personal rights are being incorporated by reference in these regulations.

Amendment of this section post-hearing is necessary for clarity. Use of the word “only” may cause this regulation to appear as though it conflicts with the regulation in Section 87468 (a)(1) by specifying that residents in privately operated RCFEs only have the rights in Health and Safety Code section 1569.269. Use the word “also” is a clearer way of stating that residents of privately operated RCFEs have the rights in (a)(1) and this section.

Modification:

Following the second public hearing, CDSS is making changes to this section for clarity purposes.

CDSS is removing pre-hearing subsection (a)(2) and the sentence "Residents in privately operated facilities only shall also have additional rights specified in Health and Safety Code section 1569.269." A list of personal rights for residents in privately operated RCFEs, based on personal rights in the referenced statute, added by Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014), is in a new post-hearing Section 87468.2.

Handbook Section 87468(a)(2)

Specific Purpose/Factual Basis:

This handbook section is removed post-hearing since the handbooked Health and Safety Code section 1569.269 is referenced in Section 87468(a). Licensees can find the full text of this statute online at [California Legislative Information \(http://leginfo.legislature.ca.gov/faces/codes.xhtml\)](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

Modification:

Following the second public hearing, CDSS is removing this handbook section. The personal rights for residents in privately operated RCFEs in Health and Safety Code section 1569.269 are incorporated into regulation text in a new post-hearing Section 87468.2.

Section 87468(b)

Specific Purpose:

This section is being amended to replace the phrase “responsible person or conservator” with the word “representative.”

Factual Basis:

CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that residents' representatives be advised of, be given, and sign personal rights along with residents. Section 87101 defines "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law." People in these roles act on behalf of residents and may have a significant role in determining residents' care and services.

Modification:

Following the second public hearing, CDSS is making the following changes for clarity purposes.

CDSS is adding the phrases "the time the," "agreement is signed," and "a copy of" post-hearing. The Department is also deleting the pre-hearing phrase "a list of these rights," and the pre-hearing sentence "The licensee shall have each resident and the resident's representative sign a copy of these rights, and the signed copy shall be included in the resident's record." A grammatical change is made to add a colon after the phrase "a copy of" to introduce the list of copies which must be provided to a resident and the resident's representative.

Both Health and Safety Code section 1569.267(a), which applies to residents in privately operated RCFEs, and the existing Section 87468(b), which applies to residents in all RCFEs, require that a resident and their representative be advised of and given a copy of personal rights "at admission." CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify that "at admission" means "at the time the admission agreement is signed" and apply this requirement to the personal rights of residents in all RCFEs. Regulations in regard to specified personal rights and signed copies of rights are placed in new subsections (b)(1) and (b)(2).

Sections 87468(b)(1) and (b)(1)(A)

Specific Purpose:

These sections are adopted to indicate the items that a resident and their representative must be advised, and given a copy, of at the time the admission agreement is signed. They are also adopted to require the licensee to have a resident and their representative sign a copy of the personal rights and include the signed copy in a resident's record.

Factual Basis:

It is necessary to adopt these sections to require that a resident and their representative be advised, and given a copy, of personal rights.

- (b)(1)** It is necessary to specify that the required personal rights are in separate sections for consistency with regulations and to comply with statute. The personal rights specified in a new post-hearing Section 87468.1 are based on those in the existing Section 87468 and apply to residents in publicly operated RCFEs. Those specified in a new post-hearing Section 87468.2 are based on personal rights in Health and Safety Code section 1569.269, added to statute by AB 2171 (Chapter 702, Statutes of 2014) and apply to residents in privately operated RCFEs. The personal rights specified in a new post-hearing Section 87468.3 are based on those in Health and Safety Code section 1439.51, which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017) and apply to residents in all facilities.
- (b)(1)(A)** The requirement that a licensee have a resident and their representative sign a copy of the personal rights, and include the signed copy in the resident's record is necessary for consistency with regulations and to comply with statute. The existing Section 87468, which applies to residents in all RCFEs, requires a signed copy of the personal rights. Health and Safety Code section 1569.267(a), which applies to residents in privately operated RCFEs, requires a dated, as well as signed, copy of the personal rights.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to apply this requirement to the personal rights in Health and Safety Code section 1439.51, which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017). Although the requirement does

not appear in that statute, CDSS is extending the requirement to those rights for consistency in applying personal rights.

CDSS is also using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to require that the personal rights be signed and permit the rights to also be dated at licensee discretion.

Sections 87468(b)(2) and (b)(2)(A) through (b)(2)(B)

Specific Purpose:

These sections are adopted to indicate that a resident and their representative must be advised, and given a copy, of a nondiscrimination notice at the time the admission agreement is signed. They are also adopted to require the licensee to have a resident and their representative sign a copy of the nondiscrimination notice and include the signed copy in a resident's record.

Factual Basis:

It is necessary to adopt these sections to require that a resident and their representative be advised, and given a copy, of a nondiscrimination notice.

- (b)(2)** The requirement for a nondiscrimination notice is necessary to comply with statute. The nondiscrimination notice is required by Health and Safety Code section 1439.51(c), which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017).
- (b)(2)(A)** The requirement that the nondiscrimination notice include all of the text specified in regulation is necessary to comply with statute. The text is verbatim from Health and Safety Code section 1439.51(c), which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017).
- (b)(2)(B)** CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to require that a licensee have a resident and their representative sign a copy of the nondiscrimination notice, and include the signed copy in the resident's record. Personal rights and nondiscrimination notice comprise nondiscrimination policy for a RCFE. Thus, a licensee is required to post the nondiscrimination notice alongside the personal rights in all places and on all materials where nondiscrimination policy is posted.

Sections 87468(c) through (c)(2) Renumbered from Sections 87468(c) through (c)(3)

Specific Purpose:

These sections are amended to *remove* regulation in the existing Sections 87468(c) and (c)(1) through (c)(2) that requires facilities "licensed for seven (7) or more" to post complaint information and personal rights "or, in lieu of a posted copy of personal rights, instructions on how to obtain additional copies of these rights."

They are also amended to *add* regulations in new Section 87468(c) to require licensees of all RCFEs to post "personal rights and complaint information" in areas accessible to "residents' representatives, and the public" as well as residents and to *add* regulations in Sections 87468(c)(1) through (c)(3) to require accessible, consistent, and universal posting of resident personal rights and complaint information in all RCFEs.

Factual Basis:

Amendment of the regulation to remove reference to facilities licensed for seven (7) or more residents is necessary to clarify that, regardless of the number of residents in a RCFE and whether a RCFE is privately operated or publicly operated, personal rights and complaint information must be posted in all RCFEs.

- (c) To comply with statute, the requirement that licensees post personal rights based on the number of residents in a RCFE will no longer apply to privately operated RCFEs. Health and Safety Code sections 1569.267(a) and (b), added to statute by AB 2171 (Chapter 702, Statutes of 2014) requires licensees of privately operated RCFEs, regardless of the number of residents in their facilities, to post information about resident personal rights. Given the requirement that licensees of privately operated RCFEs post personal rights, CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to also require that licensees of publicly operated RCFEs post personal rights. It also is necessary to remove existing regulation permitting licensees to either post personal rights or instructions on how to obtain additional copies of these rights in lieu of a posted copy for consistency with these requirements.

CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that personal rights and complaint information also be accessible to residents, their representatives, and the public for consistency with existing regulations. Section 87101 defines "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other

surrogate decisionmaker designated consistent with statutory and case law." People in these roles act on behalf of residents and need transparent access to personal rights and complaint information to support residents in regard to these rights when necessary. The public needs transparent access to personal rights and complaint information as they research RCFEs for friends or family or support friends or family in RCFEs.

- (c)(1) The requirement that licensees post procedures for filing confidential complaints is being superseded as necessary to comply with Health and Safety Code section 1569.33, amended in statute by SB 895 (Chapter 704, Statutes of 2014). This statute required CDSS to design a poster or cause a poster to be designed that contains information on how to report complaints. CDSS has made the poster available and requires that it, or a poster that is consistent with the content of the poster provided by CDSS, be posted in all RCFEs.
- (c)(1)(A) CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that personal rights and complaint information also be accessible to residents' responsible persons or conservators and the public for consistency with existing regulations. Section 87101 defines "responsible person" as an "...individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assist the resident in placement or assume varying degrees of responsibility for the resident's well-being" and "conservator" as "...a person appointed by the Superior Court pursuant to Probate Code section 1800 et. seq. or Welfare and Institutions Code section 5350, to care for the person, or estate, or person and estate, of an adult." People in these roles act on behalf of residents and need transparent access to personal rights and complaint information to support residents in regard to these rights when necessary. The public needs transparent access to personal rights and complaint information as they research RCFEs for friends or family or support friends or family in RCFEs.
- (c)(1)(B) The requirement that licensees of all RCFEs post resident personal rights as specified in Sections 87468(a)(1)(A) through (a)(1)(R), which are based on existing regulations, is necessary for consistency. The requirement that licensees of privately operated RCFEs post resident personal rights as specified in regulations is necessary to comply with Health and Safety Code section 1569.267(a), added to statute by AB 2171 (Chapter 702, Statutes of 2014), which requires these licensees to inform residents of personal rights in the California Code of Regulations (CCR), Title 22, Division 6, RCFE section 87468, Personal Rights as well as new statutory personal rights. CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to continue requiring that licensees of publicly operated RCFEs post resident personal rights as specified in regulations in this Phase I regulations package. These regulations will be

followed by more extensive changes to resident personal rights for both privately operated and publicly operated RCFEs in a forthcoming "Phase II" regulations package.

- (c)(2) The requirement that licensees of privately operated RCFEs also post resident personal rights as specified in Health and Safety Code section 1569.269, which lists new statutory personal rights, is necessary to comply with statute. Health and Safety Code section 1569.265(b), added to statute by AB 2171 (Chapter 702, Statutes of 2014) specifies that personal rights in statute apply only to privately operated RCFEs. Health and Safety Code section 1569.267(a), also added to statute by AB 2171, requires licensees of privately operated RCFEs to inform residents of new statutory personal rights as well as personal rights in the CCR, Title 22, Division 6, RCFE section 87468, Personal Rights.
- (c)(2)(A) The requirement that licensees of all RCFEs post information on the appropriate reporting agency in case of a complaint or emergency by using a complaint information poster is necessary to comply with statute. A complaint poster is being made available to licensees by CDSS and must be posted in the main entryway of a RCFE to comply with Health and Safety Code section 1569.33, amended in statute by SB 895 (Chapter 704, Statutes of 2014). The Licensing Complaint Poster (PUB 475, 1/15) is incorporated in its entirety, by reference, in the proposed regulations. Although it is unduly cumbersome, expensive, and otherwise impractical to publish this poster in the California Code of Regulations, it can be found on CDSS Community Care Licensing Division website at www.cclid.ca.gov. CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to permit licensees to develop their own complaint poster that is consistent with information on the complaint poster being made available by CDSS. This requirement is also necessary for clarity and consistency, to require that all RCFEs, regardless of whether they are privately operated or publicly operated, have universal posting of complaint information.
- (c)(3) The requirement that licensees of all RCFEs post resident personal rights and complaint information in English and other languages as specified is necessary for clarity and consistency. Health and Safety Code section 1569.267(c), added to statute by AB 2171 (Chapter 702, Statutes of 2014) requires licensees of privately operated RCFEs to post personal rights both in English and in any other language in facilities where five percent or more of residents can only read in that language. CDSS is using its broad authority to promulgate regulations for RCFEs granted by Health and Safety Code section 1569.30 to extend these requirements to posting both personal rights and complaint information in English and other languages in all RCFEs. These extended requirements are necessary to provide licensees with a clear, measurable and consistent standard for posting this

essential information in languages that can be read by residents. They are also necessary to ensure that residents have equal access to and awareness of this essential information.

These regulations meet the "clarity," "consistency" and "reference" standards of the Administrative Procedures Act (APA), Section 11349 of the Government Code, subsections (c), (d), and (e). It also meets the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "plain English" rule drafting.

Modification:

Following the July 27, 2016 public hearing, CDSS is making the following changes:

- (c) This section is being further amended to specifically include "residents, their representatives, and the public" by placing a comma after "residents" and replacing the group "relatives, responsible persons, or conservators," with the broader term "representatives."**

The pre-hearing proposed Sections 87468(c)(1), (c)(1)(A) and (B) are deleted. The pre-hearing proposed Sections 87468(c)(2) and (c)(3) are renumbered to Sections 87468(c)(1) and (c)(2) post-hearing to accommodate deletion of the pre-hearing proposed Section 87468(c)(1). Amendment of these sections is necessary post-hearing to delete the proposed Section 87468(c)(1) and subsections (c)(1)(A) through (c)(1)(B) to make the requirement to post personal rights generic in Section 87468(c) for clarity. All licensees are required to post these rights. It is self-evident that licensees of all facilities will need to post the rights specified in Section 87468(a)(1) and licensees of privately operated RCFEs will need to post the rights in both Sections 87468(a)(1) and (a)(2).

- (c)(1) The requirement that licensees of all RCFEs post information on the appropriate reporting agency in case of a complaint or emergency by using a complaint information poster, described in subsection (c)(1)(A), is necessary to comply with statute. A complaint poster is being made available to licensees by CDSS and must be posted in the main entryway of a RCFE to comply with Health and Safety Code section 1569.33, amended in statute by SB 895 (Chapter 704, Statutes of 2014). The Residential Care Facility for the Elderly (RCFE) Complaint Poster (PUB 475, 1/15) is incorporated in its entirety, by reference, in the proposed regulations. Although it is unduly cumbersome, expensive, and otherwise impractical to publish this poster in the California Code of Regulations, it can be found on CDSS Community Care Licensing Division website at www.cclid.ca.gov. CDSS is using its broad authority granted by**

Health and Safety Code section 1569.30 to permit licensees to develop their own complaint poster that is consistent with information on the complaint poster being made available by CDSS. This requirement is also necessary for clarity and consistency, to require that all RCFEs, regardless of whether they are privately operated or publicly operated, have universal posting of complaint information.

- (c)(1)(A) This section was renumbered from pre-hearing proposed section (c)(2)(A) and the title to PUB 475 was corrected to Residential Care Facility for the Elderly (RCFE) Complaint Poster, removing the word "Licensing."
- (c)(2) The requirement that licensees of all RCFEs post resident personal rights and complaint information in English and other languages as specified is necessary for clarity and consistency. Health and Safety Code section 1569.267(c), added to statute by AB 2171 (Chapter 702, Statutes of 2014) requires licensees of privately operated RCFEs to post personal rights both in English and in any other language in facilities where five (5) percent or more of residents can only read in that other language. CDSS is using its broad authority to promulgate regulations for RCFEs granted by Health and Safety Code section 1569.30 to extend these requirements to posting both personal rights and complaint information in English and other languages in all RCFEs. These extended requirements are necessary to provide licensees with a clear, measurable and consistent standard for posting this essential information in languages that can be read by residents. They are also necessary to ensure that residents who read in other languages have equal access to and awareness of personal rights and complaint information.

Second Modification:

Following the second public hearing, CDSS is making the following changes:

- (c) This section is being further amended to specifically include "personal rights, nondiscrimination notice, and complaint information." This amendment is made by placing a comma after the group "Licensees shall prominently post personal rights, adding "nondiscrimination policy," and placing a comma before the group "and complaint information in areas accessible to residents, their representatives, and the public."
- (c)(1) It is necessary to specify that the personal rights required to be posted are in separate sections for consistency with regulations and to comply with statute. The personal rights specified in a new

post hearing Section 87468.1 are based on those in the existing Section 87468 and must be posted in publicly operated RCFEs. Those specified in a new post-hearing Section 87468.2 are based on personal rights in Health and Safety Code section 1569.269, added to statute by AB 2171 (Chapter 702, Statutes of 2014) and must be posted in privately operated RCFEs. The personal rights specified in a new post-hearing Section 87468.3 are based on those in Health and Safety Code section 1439.51, which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017) and must be posted in all facilities.

The pre-hearing proposed Section 87468(c)(1) is renumbered to Section 87468(c)(2) post-hearing to accommodate addition of the new Section 87468(c)(1) post-hearing. The pre-hearing proposed Section 87468(c)(2) is deleted and relocated to a new Section 87468(d).

Section 87468(d)

Specific Purpose:

This section is amended to delete the existing regulation and adopt a new regulation. The regulation being repealed required that licensees post personal rights and complaint information "in English, and in facilities where a significant portion of the residents cannot read English, in the language they can read." The adopted regulation requires that licensees of all RCFEs include the language primarily read by each of their residents in a list of residents to be provided to CDSS upon request.

Factual Basis:

It is necessary to remove the existing requirement for posting personal rights and complaint information in other languages to clarify that the requirement that a "significant portion" of residents be unable to read English no longer applies to all RCFEs. The existing requirement is inconsistent with Health and Safety Code section 1569.267(c), added to statute by AB 2171 (Chapter 702, Statutes of 2014), which requires licensees of privately operated RCFEs to post personal rights both in English and in any other language in facilities where five percent or more of residents can only read in that language. Further, the term "significant" is subjective and does not provide necessary clarity in regard to the specific number of residents in a given RCFE that would need to be unable to read English for the requirement to apply.

The addition of regulation is necessary for consistency with existing requirements in the CCR, Title 22, Division 6, RCFE section 87508, Register of Residents. This section requires that licensees ensure that a current register of all residents in a RCFE is maintained and contains specified updated information. It also requires

that registers of residents be treated as confidential and be made available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. CDSS is using its broad authority to promulgate regulations granted by Health and Safety Code section 1569.30 to require that this list also include languages read by residents and apply to all RCFEs. This regulation will, when residents in RCFEs read in languages other than English, provide CDSS with a readily available means of identifying languages read by residents to determine whether licensees comply with posting requirements. It will also assist in mitigating the costs of resident records review that might otherwise be incurred to implement AB 2171.

Modification:

Following the second public hearing, CDSS is making the following changes for clarity purposes.

The Department is adopting a new Subsection 87468(d), relocated from the pre-hearing proposed Section 87468(c)(2). The section is expanded to specifically include "personal rights, nondiscrimination notice, and complaint information" by adding "nondiscrimination notice."

The pre-hearing proposed Section 87468(d) is renumbered to Section 87468(e) post-hearing to accommodate addition of the new Section 87468(d) post-hearing.

Section 87468.1

Specific Purpose/Factual Basis:

This section is adopted to establish a separate section in regulation to address personal rights for residents in publicly operated RCFEs. CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to relocate the existing personal rights from Section 87468 to this section and maintain them for residents in publicly operated RCFEs. Adoption of this section is necessary as a result of the passage of Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014), which, as specified in Health and Safety Code section 1569.265, enacted a statutory Resident's Bill of Rights for residents in privately operated RCFEs.

Section 87468.1(a) through (a)(18) and Handbook Section 87468.1(a)(10)

Specific Purpose:

These sections are adopted to *add* regulation to specify that “Residents in publicly operated residential care facilities for the elderly shall have all of the following personal rights.” The Handbook is added for ease of reference to Health and Safety Code section 1569.313 mentioned in Subsection (a)(10).

They are also adopted to *add* personal rights for residents in publicly operated RCFEs to regulation.

Factual Basis:

Adoption of regulation is necessary for consistency in applying the existing regulatory personal rights to publicly operated RCFEs.

- (a) CDSS is using its broad authority to promulgate regulations in Health and Safety Code section 1569.30 to subject publicly operated RCFEs to, and ensure all residents in those RCFEs are protected by, the provisions of this section.

- (a)(1) A resident's right to have dignity in their personal relationships is adopted for consistency with the existing right in Section 87468(a)(1).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "be accorded" with the word "have." This modification is necessary to use a more modern and easily understood word for "accorded" in this right.

CDSS is replacing the phrase “his/her” in the existing right with the word “their” in this right. This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

- (a)(2) A resident's right to have safe, healthful and comfortable accommodations, furnishings and equipment is adopted for consistency with the existing right in Section 87468(a)(2).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "be accorded"

with the word "have." This modification is necessary to use a more modern and easily understood word for "accorded" in this right.

- (a)(3) A resident's right to be free from punishment, humiliation, intimidation, abuse, or other actions of a punitive nature is adopted for consistency with the existing right in Section 87468(a)(3).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is omitting the phrase "corporal or unusual," the word "mental," and the word "patterns" from this right. The Department is also replacing the phrase "of monetary allowances" in the existing right with the phrase "residents' money." Any form of punishment, abuse, withholding money a resident is normally entitled to, and interference with normal sleep, including sleeping patterns, eating, and elimination would be contrary to personal rights.

- (a)(4) A resident's right to be informed of provisions of law regarding complaints, procedures for confidentially registering complaints, and how to contact specified agencies regarding grievances in regard to the facility is adopted for consistency with the existing right in Section 87468(a)(4).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "procedures to confidentially register" with the phrase "procedures for confidentially registering." The Department is also replacing the phrase "telephone number of" with the phrase "telephone number for." These modifications are necessary to use more easily understood language in this right.

CDSS is replacing the phrase "licensing agency" in the existing right with the word "Department" in this right. This modification is necessary to refer to "Department," the standard term for referring to CDSS, currently the only licensing agency for RCFEs, in regulations.

CDSS is adding the phrase "and how to contact the Community Care Licensing Division of the California Department of Social Services, and the long-term care ombudsman regarding grievances in regard to the facility" to this right. This phrase is included in a personal right for residents in privately operated RCFEs in Health and Safety Code section 1569.269(a)(12), enacted by Assembly Bill 2171

(Chapter 702, Statutes of 2014), but it is also appropriate for residents in publicly operated RCFEs to confidentially register complaints with these agencies. CDSS licenses, and the long-term care ombudsman supports, all RCFEs.

CDSS is using the phrase "in regard to the licensee" in this right instead of the phrase "against the licensee" used in Health and Safety Code section 1569.269(a)(12). It is necessary to avoid using language that is unnecessarily adversarial to a licensee.

- (a)(5) A resident's right to have freedom to attend religious services or activities of their choice either in or outside the facility and visits from the spiritual advisor of their choice is adopted for consistency with the existing right in Section 87468(a)(5).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "freedom of attending" with the phrase "freedom to attend." This modification is necessary to use more easily understood language in this right.

CDSS is replacing the words "his/her" in the existing right with the word "their" in this right. This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

CDSS is adding the phrase "either in or outside the facility" to the first sentence of this right. The Department is omitting the second sentence of the existing personal right, "Attendance at religious services, either in or outside the facility, shall be on a completely voluntary basis." The concept of choice is already in the first sentence of the right.

- (a)(6) A resident's right to leave or depart the facility at any time and not be locked into any room, building, or on facility premises is adopted for consistency with the existing right in Section 87468(a)(6). The provision specifying the licensee is not prohibited from establishing house rules, such as locking doors to protect residents, or barring windows against intruders, with permission from the Department is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "prohibit the

establishment of" with the phrase "prohibit a licensee from establishing." This modification is necessary to clarify that a licensee is not prohibited from establishing house rules for a RCFE in this right.

CDSS is replacing the phrase "the locking of" in the existing right with the word "locking" in this right. The Department is also replacing the phrase "for the protection of" with the phrase "to protect." In addition, the Department is replacing the phrase "nor does it prohibit...the barring of windows against intruders" with the phrase "or barring windows against intruders." These modifications are necessary to reduce the number of words and use more easily understood language in this right.

CDSS is replacing the phrase "licensing agency" in the existing right with the word "Department" in this right. This modification is necessary to refer to "Department," the standard term for referring to CDSS, currently the only licensing agency for RCFEs, in regulations.

- (a)(7) A resident's right to visit the facility prior to residence with their representatives is adopted for consistency with the existing right in Section 87468(a)(7).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" with the word "their." This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

CDSS is replacing the phrase "family and responsible persons" in the existing right with the word "representatives" in this right. This modification is necessary for consistency with existing regulations in Section 87101, which define "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law." People in these roles have a significant role in determining residents' care and services.

- (a)(8) A resident's right to have their representatives regularly informed by the licensee of activities related to care or services is adopted for consistency with the existing right in Section 87468(a)(8).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" and the words "the resident's" with the word "their." The Department is also omitting the word "his" from the phrase "his care or services." These modifications are necessary to use references that are gender-neutral and avoid using references that are gender-specific so that the right is equally applied to residents in RCFEs regardless of their gender identity.

CDSS is replacing the phrase "family and responsible persons" in the existing right with the word "representatives" in this right. This modification is necessary for consistency with existing regulations in Section 87101, which define "representative" as an individual who has authority to act on behalf of the resident. People in these roles have a significant role in determining residents' care and services.

CDSS is replacing the word "facility" in the existing right with the word "licensee" in this right. A licensee, not a RCFE, which is an inanimate object, can provide information about activities related to care or services.

- (a)(9) A resident's right to have communications to the licensee from their representatives answered promptly and appropriately is adopted for consistency with the existing right in Section 87468(a)(9).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. It replacing the word "facility" with the word "licensee." A licensee, not a RCFE, which is an inanimate object, can have communications with a resident's representatives.

CDSS is replacing the words "his/her" and the words "the resident's" in the existing right with the word "their" in this right. These modifications are necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

CDSS is replacing the phrase "family and responsible persons" in the existing right with the word "representatives" in this right. This modification is necessary for consistency with existing regulations in Section 87101, which define "representative" as an individual who has authority to act on behalf of the resident. People in these roles have a significant role in determining residents' care and services.

- (a)(10) A resident's right to be informed of the licensee's policy concerning visits and other communications with residents, according to Health and Safety Code section 1569.313 and handbook reference are adopted for consistency with statute and the existing right in Section 87468(a)(10). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.313 specifies requirements for providing residents and their representatives with RCFE policy concerning family visits and other communication with residents.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the word "facility's" with the word "licensee's." A licensee, not a RCFE, which is an inanimate object, can have a policy.

CDSS is replacing the phrase "as specified in" in the existing right with the phrase "according to" in this right. This modification is necessary to use more easily understood language.

- (a)(11) A resident's right to have their visitors permitted to visit privately during reasonable hours and without prior notice, provided that the rights of other residents are not infringed upon, is adopted for consistency with the existing right in Section 87468(a)(11).**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" with the word "their." This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

- (a)(12) A resident's right to wear their own clothes, keep and use their own personal possessions, and keep and spend their own money is adopted for consistency with the existing right in Section 87468(a)(12).**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" with the word "their." This modification is necessary to use a reference

that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

- (a)(13) A resident's right to have access to individual storage space for private use is adopted for consistency with the existing right in Section 87468(a)(13).
- (a)(14) A resident's right to have reasonable access to telephones for confidential calls is adopted for consistency with the existing right in Section 87468(a)(14). The provision specifying that the licensee may require reimbursement for long distance calls is also adopted for consistency with that right.
- (a)(15) A resident's right to send and receive unopened correspondence in a prompt manner is adopted for consistency with the existing right in Section 87468(a)(15).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. CDSS is replacing the word "mail" with the word "send." This modification is necessary to include e-mail as well as traditional postal mail to modernize requirements in regulations.

- (a)(16) A resident's right to receive or reject medical care or other services is adopted for consistency with the existing right in Section 87468(a)(16).
- (a)(17) A resident's right to receive assistance in exercising the right to vote is adopted for consistency with the existing right in Section 87468(a)(17).
- (a)(18) A resident's right to move from the facility is adopted for consistency with the existing right in Section 87468(a)(18).

Section 87468.2

Specific Purpose/Factual Basis:

This section is adopted to establish a separate section in regulation to address personal rights for residents in privately operated RCFEs. Adoption of this section is necessary to implement AB 2171 (Chapter 702, Statutes of 2014), which, as specified in Health and Safety Code section 1569.265, enacted a statutory Resident's Bill of Rights for residents in privately operated RCFEs.

Sections 87468.2(a) through (a)(30) and Handbook Sections 87468.2(a)(9), (a)(12), (a)(13), (a)(14), (a)(25), (a)(27), and (a)(28)

Specific Purpose:

These sections are adopted to *add* regulation to specify that “Residents in privately operated residential care facilities for the elderly shall have all of the following personal rights.” The Handbook sections are added for ease of reference to the California Codes mentioned in Subsections (a)(9), (a)(12), (a)(13), (a)(14), (a)(25), (a)(27), and (a)(28).

They are also adopted to *add* the Resident’s Bill of Rights for residents in privately operated RCFEs to regulation.

Factual Basis:

Adoption of regulation is necessary for consistency in applying the statutory Resident’s Bill of Rights to privately operated RCFEs.

(a) To comply with statute, privately operated RCFEs are subject to, and all residents in these RCFEs are protected by, the provisions of this section. Health and Safety Code section 1569.265 specifies that “The provisions of this article apply only to privately operated residential care facilities for the elderly.”

(a)(1) A resident’s right to have dignity in their personal relationships is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(1).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase “be accorded” in statute with the word “have” in regulation. This clarification is necessary to use a more modern and easily understood word for “accorded.”

(a)(2) A resident’s right to have a reasonable level of personal privacy is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(2).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase “be granted” in statute with the word “have” in regulation. This clarification is necessary to use a word that is less authoritative and more respectful of residents in RCFEs.

- (a)(3) A resident's right to have their records and personal information remain confidential and approve their release, except as authorized by law is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(3).**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase “confidential treatment of their records and personal information” in statute to read “their records and personal information remain confidential” in regulation. This clarification is necessary to clarify what “confidential treatment” means.

- (a)(4) A resident's right to be encouraged and assisted in exercising their rights as citizens and as residents of the facility is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(4). The requirement that residents be free from interference, coercion, discrimination, and retaliation in exercising their rights is also adopted for consistency with that right.**

- (a)(5) A resident's right to have safe, healthful, and comfortable accommodations, furnishings, and equipment is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(5).**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase “be accorded” in statute with the word “have” in regulation. This clarification is necessary to use a more modern and easily understood word for “accorded.”

- (a)(6) A resident's right to care, supervision, and services that meet their individual needs and are delivered by sufficient staff is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(6).**

- (a)(7) A resident's right to be served food necessary to meet their nutritional needs is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(7).**

- (a)(8) A resident's right to make choices concerning their daily lives in the facility is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(8).**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word “life” in statute with the word “lives” in regulation. This clarification is necessary to use a word that is plural for consistency with applying personal rights to residents.

- (a)(9) A resident’s right to fully participate, and involve persons of their choice, in planning their care, including attending and participating in meetings or communications regarding care and services, according to Health and Safety Code section 1569.80 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(9). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.80 specifies requirements for including a resident in care planning.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase “in accordance with” in statute with the phrase “according to” in regulation. This clarification is necessary to use more modern and easily understood words.

CDSS is replacing the phrases "the planning process" and "the process" in statute with the phrases "this planning" and "planning of their care" in regulation. This clarification is necessary to remove the reference to "process," which "planning" includes, and to more clearly reflect that residents are directing planning, to the extent possible.

CDSS is omitting other words, such as "the" before the phrase "care and services," from the right in statute that are not necessary to convey the meaning intended by statute.

- (a)(10) A resident’s right to be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and abuse is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(10).**

- (a)(11) A resident's right to present grievances and recommend changes to the facility staff, management, and governing authority, and to any other person without retaliatory actions is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(11). The requirement that the licensee respond to residents' grievances and recommendations promptly is also adopted for consistency with that right.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "the staff of the facility, the facility's management and governing authority" in statute with the phrase "the facility staff, management, and governing authority" in regulation. This clarification is necessary to use fewer words.

CDSS is replacing the sentence "The licensee shall take prompt actions to respond to residents' grievances" in statute with the sentence "The licensee shall respond to residents' grievances and recommendations promptly" in regulation. This clarification is necessary to include the concept of recommendations from residents, which may arise from grievances.

- (a)(12) A resident's right to contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances in regard to the licensee is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(12). The requirement that the licensee post the telephone numbers and addresses for the local offices of the State Department of Social Services and ombudsman program according to Welfare and Institutions Code section 9718 and handbook reference are also adopted for consistency with that right. Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Welfare and Institutions Code section 9718 specifies requirements for posting the required information.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "against" in statute with the phrase "in regard to" in regulation. This clarification is necessary to avoid using language that is unnecessarily adversarial to a licensee.

CDSS is replacing the phrase "in accordance with" in statute with the phrase "according to" in regulation. This clarification is necessary to use more modern and easily understood words.

CDSS is adding the phrase "and their representatives" to the right. This phrase is necessary for consistency with the roles residents' representatives may assume in acting on behalf of residents and determining residents' care and services. It is also consistent with the requirement that posted information related to personal rights be accessible to residents' representatives, as specified in Section 87468.

- (a)(13) A resident's right to be fully informed, prior to or at the time of admission, of all rules that govern resident conduct and responsibilities while living at the facility, as evidenced by the resident's written acknowledgement is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(13). The requirement that all rules established by a licensee be reasonable and not violate any rights or other applicable laws or regulations, according to Health and Safety Code section 1569.885 and handbook reference are also adopted for consistency with that right. Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.885 specifies requirements for RCFE rules.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "To be fully informed, as evidenced by the resident's written acknowledgement, prior to or at the time of admission, of all rules" in statute to read "To be fully informed, prior to or at the time of admission, of all rules....as evidenced by the resident's written acknowledgement" in regulation. This clarification is necessary to place the requirement to inform residents before the requirement to have written acknowledgement of the information from residents.

CDSS is replacing the phrase "governing residents' conduct and responsibilities" in statute with the phrase "that govern resident conduct and responsibilities while living at the facility" in regulation. This clarification is necessary to shorten some words in the right and clarify that the rules referred to in the right apply only while residents are living at a RCFE.

CDSS is rephrasing the sentence "In accordance with Section 1569.885, all rules established by a licensee shall be reasonable and shall not violate any rights set forth in this chapter or in other applicable laws and regulations" in statute to read "All rules established by a licensee shall be reasonable and not violate any rights in this section or other applicable laws or regulations, according to Health and Safety Code section 1569.885" in regulation. This clarification is necessary to write regulation in layperson's terms. It is also necessary to refer to this section of regulations rather than statute, place statute at the end of the right, and clarify which code in statute is being referred to.

- (a)(14) A resident's right to receive a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided in the admission agreement, and to receive written notice of any rate increases according to Health and Safety Code sections 1569.655 and 1569.884 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(14). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code sections 1569.655 and 1569.884 specify requirements for fee schedules and rate increases.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided" in statute to read "To receive a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided in the admission agreement" in regulation. This clarification is necessary to place the requirement that residents receive specified information before the requirement that the information be in the admission agreement.

CDSS is replacing the phrase "pursuant to Sections 1569.655 and 1569.884" in statute with the phrase "according to Health and Safety Code sections 1569.655 and 1569.884" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

- (a)(15) A resident's right to be informed in writing prior to or at the time of admission, of any resident retention limitations set by the state or

licensee, including any limitations or restrictions on the licensee's ability to meet residents' needs is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(15).

- (a)(16) A resident's right to reasonable accommodation of their individual needs and preferences in all aspects of life in the facility, except when accommodation would endanger the health or safety of the individual resident or other residents is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(16).
CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the word "their" before the phrase "individual needs and preferences" in statute so that the phrase reads "their individual needs and preferences" in regulation. This clarification is necessary to clarify that the right refers to the needs and preferences of residents.

CDSS is removing the phrase "except when the health or safety of the individual or other residents would be endangered" in statute to read "except when accommodation would endanger the health or safety of the individual resident or other residents" in regulation. This clarification is necessary to clarify that an accommodation may endanger health or safety and that "individual" refers to a resident.

- (a)(17) A resident's right to reasonable accommodation of their preferences concerning room and roommate choices is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(17).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "resident" in statute with the word "their" in regulation. This clarification is necessary for consistency with use of the gender-neutral "their" to refer to residents in these personal rights.

- (a)(18) A resident's right to written notice of any room changes at least 30 days in advance unless a room change is agreed to by the resident, required to fill a vacant bed, or necessary due to an emergency is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(18).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department

is replacing the phrase “the request for a change” in statute with the phrase “a room change” in regulation. This clarification is necessary to use fewer words and clarify that the requested change would be in regard to moving from one room to another.

- (a)(19) A resident’s right to share a room with their spouse, domestic partner, or other resident of their choice when both live in the facility and consent to the arrangement is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(19). CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase “the resident’s” and the word “resident’s” in statute with the word “their” in regulation. This clarification is necessary to use fewer words and for consistency with use of the gender-neutral “their” to refer to residents in these personal rights.

CDSS is removing the word “same” before “facility” in statute to read “the facility” in regulation. This clarification is necessary since the word “same” is not necessary to adequately convey that a resident and another resident wanting to share a room must live in the RCFE.

CDSS is adding the word “both” before the word “consent” in statute so that the phrase reads “both consent” in regulation. This clarification is necessary to indicate that the resident and their spouse, domestic partner, or other resident must agree to share a room.

- (a)(20) A resident’s right to select their own physicians, pharmacies, privately paid personal assistants, hospice agency, and health care providers in a manner that is consistent with the resident’s admission agreement or other rules of the facility, and according to these personal rights is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(20).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "contract of admission" in statute" with the phrase "admission agreement" in regulation. This clarification is necessary for consistency with use of the term "admission agreement" as defined in Section 87101(a)(2) and as referenced in existing regulations. "Admission agreement" is defined as "...all documents that a resident or resident's representative must sign at the time of, or as a condition of, admission."

CDSS is replacing the phrase "in accordance with this act" in statute with the phrase "according to these personal rights" in regulation. This clarification is necessary to write regulation in layperson's terms and refer to this section of regulations rather than statute.

- (a)(21) A resident's right to have prompt access to all of their records and to purchase photocopies of their records is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(21). The requirement that photocopied records be provided within two business days and at a cost that does not exceed the community standard for photocopies is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the unnecessary word "review" from the phrase "to review all" in statute to make it clear that a resident has access to all of their records, which includes the resident being permitted to review them.

CDSS is adding the phrase "of their records" to the phrase "purchase photocopies" in statute. It is necessary to clarify that "photocopies" refer to a resident's records.

CDSS is replacing the phrase "promptly provided, not to exceed two (2) business days, at a cost not to" in statute with the phrase "provided within two (2) business days and at a cost that does not" in regulation. The word "promptly" is not needed since the right specifies a required timeframe for providing photocopies. The phrase "to not exceed" can adequately be expressed by the word "within." The phrase "cost that does not" describes acceptable cost in more easily understood words.

- (a)(22) A resident's right to be protected from involuntary transfers, discharges, and evictions is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(22). The requirements that a licensee only involuntarily transfer or evict residents for reasons permitted by state law or regulations and comply with all eviction and relocation protections for residents is also adopted for consistency with that right. In addition, a definition of "involuntary" included in the right is adopted for consistency with the right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department

is omitting the phrase "in violation of state laws and regulations" in the first sentence of the right in statute from the first sentence of the right in regulation. The phrase is not necessary since the right provides residents with a broad and general protection from involuntary transfers, discharges, and evictions. Also, state law and regulations are addressed in the second sentence of the right.

CDSS is replacing the word "Facilities" in statute with the phrase "A licensee." A licensee, not a RCFE, which is an inanimate object, can transfer or evict residents.

CDSS is replacing the word "not" and the phrase "grounds other than those specifically enumerated under" in statute with the word "only" and the phrase "reasons permitted by" in regulation. The Department is also replacing the second instance of the word "enumerated" in statute with "all" in regulation. These clarifications are necessary to reduce the number of, and use more easily understood, words to convey the meaning of the right.

- (a)(23) A resident's right to move from a facility is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(23).
- (a)(24) A resident's right to consent to have their relatives and other individuals of their choosing visit during reasonable hours, privately, and without prior notice is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(24).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the word "their" so there is the phrase "have their relatives" in regulation and replacing "the resident's" in statute with the word "their" in regulation. This clarification is necessary to use fewer words and for consistency with use of "their" to refer to residents in these personal rights.

- (a)(25) A resident's right to receive written information on the right to establish an advance health care directive, and according to Health and Safety Code section 1569.156, the licensee's written policies on honoring an advance health care directive and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(25). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.156 specifies

requirements for providing information to residents about, and honoring, advance health care directives.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "advanced" in statute with the word "advance" in regulation. This clarification is necessary for consistency with use of the term "advance health care directive" as defined in Section 87101(a)(5) and as referenced in existing regulations.

CDSS is replacing the phrase "pursuant to Section 1569.156" in statute with the phrase "according to Health and Safety Code section 1569.156" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

CDSS is replacing the phrase "those directives" in statute with the phrase "an advance health care directive" in regulation. This clarification is necessary to refer to the directives by name for ease of understanding.

- (a)(26) A resident's right to be encouraged to develop and maintain their fullest potential for independent living through participation in activities designed and implemented for this purpose, according to Section 87219 is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(26).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "to maintain and develop" in statute to read "develop and maintain" in regulation. A potential for independent living has to be developed before the potential can be maintained.

CDSS is omitting the phrase "that are" before the word "designed" in statute so the phrase reads "activities designed" in regulation. This phrase is not necessary to adequately convey the meaning intended by statute.

CDSS is replacing the phrase "in accordance with Section 87219 of Title 22 of the California Code of Regulations" in statute with the phrase "according to Section 87219" in regulation. This clarification is necessary to use more modern and easily understood words. Also, reference to Title 22 and the California Code of Regulations is

unnecessary to refer to another section of regulations within the regulations.

- (a)(27) A resident's right to organize and participate in a resident council established according to Health and Safety Code section 1569.157 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(27). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.157 specifies requirements for assisting residents in establishing and maintaining a resident council.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "that is" before "established" in statute so the phrase reads "resident council established" in regulation. This phrase is not necessary to adequately convey the meaning intended by statute.

CDSS is replacing the phrase "pursuant to Section 1569.157" in statute with the phrase "according to Health and Safety Code section 1569.157" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

- (a)(28) A resident's right to protection of their property from theft or loss according to Health and Safety Code sections 1569.152, 1569.153, and 1569.154 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(28). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code sections 1569.152, 1569.153, and 1569.154 specify requirements for safeguarding resident property.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "in accordance with Sections 1569.152, 1569.153, and 1569.154" in statute with "according to Health and Safety Code sections 1569.152, 1569.153, and 1569.154" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

- (a)(29) A resident's right to manage their financial affairs is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(29). The requirement that a licensee not require residents to deposit their personal funds with the licensee is also adopted for consistency with the right.
- (a)(30) A resident's right to keep, have access to, and use their own personal possessions, including toilet articles, and to keep and be allowed to spend their own money, unless limited by statute or regulation is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(30).

These sections also meet the "nonduplication" standard as defined in Government Code section 11349(f). CDSS is including relevant portions of enabling legislation in AB 2171 (Chapter 702, Statutes of 2014) in regulation since duplication is necessary to meet the clarity standard as defined in Government Code section 11349(c).

Section 87468.2(b)

Specific Purpose:

This section is adopted to *add* regulation to specify that the Department will not waive the personal rights specified in Subsection (a).

Factual Basis:

Adoption of regulation is necessary for clarity and consistency in applying the statutory Resident's Bill of Rights in privately operated RCFEs. All of the personal rights specified in Subsection (a) are from statute, which cannot be waived at the discretion of CDSS.

Section 87468.3

Specific Purpose/Factual Basis:

This section is adopted to establish a separate section in regulation to address personal rights for residents who are lesbian, gay, bisexual, and transgender (LGBT), in all RCFEs. Adoption of this section is necessary to implement SB 219 (Chapter 483, Statutes of 2017), which enacted a LGBT Residents' Bill of Rights, and applied this bill of rights to RCFEs in Health and Safety Code section 1569.318.

Section 87468.3(a) through (a)(8)

Specific Purpose:

These sections are adopted to *add* regulation to specify that “All residents in residential care facilities for the elderly shall be protected from all of the actions specified in this section.”

They are also adopted to *add* regulation to prohibit a licensee or RCFE staff from taking any of the specified actions on the basis of the actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status, of a resident.

In addition, these sections are adopted to *add* the LGBT Bill of Rights to regulation.

Factual Basis:

Adoption of regulation is necessary for consistency in applying the statutory LGBT Residents’ Bill of Rights to RCFEs.

- (a) To comply with statute, all RCFEs are subject to, and all residents in RCFEs are protected by, the provisions of this section. Health and Safety Code section 1569.318 specifies that “Every residential care facility for the elderly shall abide by the provisions of the Lesbian, Gay, Bisexual, and Transgender Long-Term Care Facility Residents’ Bill of Rights (Chapter 2.45 (commencing with Section 1439.50)).”

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify that the statutory LGBT Residents’ Bill of Rights is applied to all residents in RCFEs. These rights, such as the right to be referred to by a resident’s preferred name or pronouns, are appropriate to all residents regardless of whether they are LGBT.

The prohibition of actions specified in this section is necessary for consistency with statute. Health and Safety Code section 1439.51 specifies that, “...it shall be unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person’s actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status.”

- (a)(1) The requirement that a licensee or facility staff not deny admission to a facility, transfer or refuse to transfer a resident within the facility or to another facility, or discharge or evict a resident from a facility on

the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(1).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "long-term care" before the word "facility" in statute so the phrase reads "a facility" in regulation.

This clarification is necessary because RCFEs are not considered to be among the long-term care facilities, such as Skilled Nursing Facilities, governed by Health and Safety Code section 1439.50, et seq.

(a)(2) The requirement that a licensee or facility staff not deny a request by residents to share a room on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(2).

(a)(3) The requirement that a licensee or facility staff not, where rooms are assigned by gender, assign, reassign, or refuse to assign, a room to a resident who is transgender other than according to the resident's gender identity, unless at the request of the resident, and on the basis of actual or perceived characteristics of a resident specified in subsection (a), is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(3).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the words "assigning," "reassigning," and "refusing" in statute with the words "assign," "reassign," and "refuse" in regulation for consistency with the tense of words, such as "deny," in the other rights in regulation.

CDSS is reorganizing the phrases "transgender resident" and "transgender resident's" in statute to read "resident who is transgender" in regulation. This clarification is necessary to use "person first" language that places the person (resident) before the characteristic of the person (transgender). CDSS is also omitting the first reference to the word "transgender" before the word "resident's" in statute since it is duplicative.

CDSS is replacing the phrase "in accordance with" in statute with the phrase "according to" in regulation. This clarification is necessary to use more modern and easily understood words.

- (a)(4) The requirement that a licensee or facility staff not prohibit the resident from using, or harass a resident who seeks to use or uses, a restroom available to others of the same gender identity, regardless of whether the resident is making a gender transition or appears to be gender-nonconforming, and on the basis of actual or perceived characteristics of a resident specified in subsection (a), is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(4). In addition, a definition of "harassment" included in the prohibited action is adopted for consistency.**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "does use" in statute with the word "uses" in regulation. The Department is also omitting the phrase "in order" before the phrase "to gain" in statute from regulation. This clarification is necessary to reduce the number of words and use more easily understood language in this right.

- (a)(5) The requirement that a licensee or facility staff not willfully and repeatedly fail to use a resident's preferred name or pronouns after being informed of the resident's preferred name or pronouns in a clear manner, and on the basis of actual or perceived characteristics of a resident specified in subsection (a), is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(5).**

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the word "resident's" before the word "preferred" in regulation. This clarification is necessary to indicate that the preference is that of the resident.

CDSS is replacing the phrase "clearly informed of the preferred name or pronoun" with "informed of the resident's preferred name or pronouns in a clear manner." This clarification is necessary to place the information provided before the manner in which it is provided.

- (a)(6) The requirement that a licensee or facility staff not deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics**

permitted for any other resident on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(6).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "that are" in statute from regulation. This phrase is not necessary to adequately convey the meaning intended by statute.

- (a)(7) The requirement that a licensee or facility staff not restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the licensee applies the restriction uniformly to all residents in a nondiscriminatory manner, on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(7). The provision that a licensee is not precluded from banning sexual relations as long as the ban is applied uniformly to all residents in a nondiscriminatory manner is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the phrase "the licensee applies" to and reorganizing the phrase "unless the restriction is uniformly applied " in statute to read "unless the licensee applies the restriction uniformly" in regulation. This clarification is necessary to indicate that a licensee is responsible for uniformly applying a restriction.

CDSS is replacing the phrase "This section does not preclude a facility" in statute with the phrase "A licensee is not precluded" in regulation. A licensee, not a RCFE, which is an inanimate object, can implement a ban.

CDSS is omitting the phrases "or restricting" and "or restriction" in statute from regulation. This clarification is necessary to avoid repeating the concept of restricting sexual relations in the right. The first sentence of the right permits general restrictions, including those on sexual relations, and the second sentence of the right permits banning sexual relations.

CDSS is adding additional language to the right to address situations in which privacy is required and notifying residents of RCFE restrictions. This clarification is necessary to assist licensees in handling privacy amongst residents and informing residents of any restrictions in a RCFE.

- (a)(8) The requirement that a licensee or facility staff not deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care to the resident in a manner that unduly demeans the resident's dignity or causes avoidable discomfort, on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(8).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the phrase "to the resident" after the phrase "provide medical or nonmedical care" in statute so that the phrase reads "provide medical or nonmedical care to the resident" in regulation. This clarification is necessary to indicate a resident must be given care consistent with the right.

These sections also meet the "nonduplication" standard as defined in Government Code section 11349(f). CDSS is including relevant portions of enabling legislation in SB 219 (Chapter 483, Statutes of 2017) in regulation since duplication is necessary to meet the clarity standard as defined in Government Code section 11349(c).

Section 87468.3(b)

Specific Purpose:

This section is adopted to *add* regulation to specify that the resident rights in this section do not apply if they are incompatible with the professionally reasonable clinical judgment of a medical professional.

Factual Basis:

Adoption of regulation is necessary for consistency in applying the statutory LGBT Residents' Bill of Rights to RCFEs. The LGBT Residents' Bill of Rights does not apply to RCFEs when granting a resident any right goes against the professionally reasonable clinical judgement of a medical professional, consistent with the provision in Health and Safety Code section 1439.51(b), which applies to RCFEs as specified in Health and Safety Code

section 1569.318, added by SB 219 (Chapter 483, Statutes of 2017). The judgement of a medical professional, as defined in Section 87101(m)(2), could override the right when the right impacts a resident or other residents due to a condition that may impact health and safety or is prohibited in RCFEs as specified in Section 87615.

Section 87468.3(c)

Specific Purpose:

This section is adopted to *add* regulation to specify that the Department will not waive the personal rights specified in subsection (a).

Factual Basis:

Adoption of regulation is necessary for clarity and consistency in applying the statutory LGBT Residents' Bill of Rights in RCFEs. All of the personal rights specified in subsection (a) are from statute, which cannot be waived at the discretion of CDSS.

Section 87506(b) and (b)(1)

Specific Purpose:

These sections are amended to *add* the word "resident's" before the word "record" in subsection (b) and *add* the phrase "as indicated by the resident" after "Resident's name" in subsection (b)(1).

Factual Basis:

Amendment of this section is necessary to clarify requirements, and comply with statutory requirements, for resident records.

- (b) It is necessary to indicate that the record referred to in the section is required for each resident in a RCFE.
- (b)(1) The requirement that a resident's record also include the resident's name, as indicated by the resident, is necessary to comply with the requirements of the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017). A resident's records must include the "correct name, as indicated by the resident" as specified in Health and Safety Code section 1439.52, which applies to RCFEs as specified in Health and Safety Code section 1569.318.

Section 87506(b)(2)

Specific Purpose:

This section is adopted to *add* the requirement that each resident's record include gender identity and pronoun, as indicated by the resident.

Factual Basis:

Adoption of this section is necessary to comply with the requirements of the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017). A resident's records must include the gender identity of, and pronoun as indicated by, the resident as specified in Health and Safety Code section 1439.52, which applies to RCFEs as specified in Health and Safety Code section 1569.318.

Sections 87506(b)(3) through (b)(16) are Renumbered from Sections 87506(b)(2) through (b)(15)

Specific Purpose/Factual Basis:

Sections 87506(b)(2) through (b)(15) are renumbered to Sections 87615(b)(3) through (b)(16) to accommodate the adoption of Section 87506(b)(2).

Amendment of Section 87506(b)(7) is necessary to replace the phrase "responsible persons" with the phrase "the resident's representative." CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that residents' representatives be able to visit a RCFE, informed about care, and have communications answered for consistency with existing regulations. Section 87101 defines "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law." People in these roles act on behalf of residents and may have a significant role in determining residents' care and services. There are grammatical changes to the section to revise "names" to "name," "addresses" to "address," and "telephone numbers" to "telephone number."

Amendment of Sections 87506(b)(9) and (b)(13) through (b)(16) are necessary to make a technical change to remove reference to the title of a section. It is unnecessary for the number of another section of the RCFE regulations to be followed by the title of the section.

Amendment of Section 87506(b)(10) is necessary to make a technical change to remove reference to subsection (a) in reference to Section 87611. These subsections may change in the future and result in incorrect references in this section.

Amendment of Section 87506(b)(12) is necessary to replace the word "the" with the word "needed" and remove the gender-specific phrase "he needs."

The requirement applies equally to all resident records in RCFEs regardless of a resident's gender or gender identity.

b) Identification of Documents Upon Which Department Is Relying

Documents relied upon in proposing these regulations are:

AB 2171 (Chapter 702, Statutes of 2014);

AB 878 (Chapter 526, Statutes of 1993);

SB 219 (Chapter 483, Statutes of 2017);

SB 895 (Chapter 704, Statutes of 2014);

California Department of Public Health All Facility Letter (AFL) 08-09 on Mandated Reporting of Staging of Pressure Ulcers, dated May 27, 2008;

National Pressure Ulcer Advisory Panel (NPUAP) Press Release on change in terminology from pressure ulcer to pressure injury and updates the stages of pressure injury, dated April 13, 2016;

National Pressure Ulcer Advisory Panel (NPUAP), European Pressure Ulcer Advisory Panel (EPUAP) and Japanese Society of Pressure Ulcers (JSPU), et al., as sponsored by Gaymar Industries, Inc. (now Stryker) on Shear: A contributory factor in pressure ulceration slide set on NPUAP website September 21, 2016; and

WoundSource article on Identifying Types of Tissues Found in Pressure Ulcers, dated November 20, 2014.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or on local school districts. There are no reimbursable state-mandated costs under Section 17500 et seq. of the Government Code, because these regulations only make technical and clarifying changes.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives than the one proposed because this was the most effective. No reasonable alternative has been presented for review.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Existing regulatory personal rights would continue to apply to publicly operated RCFEs. Expanded personal rights regulations to implement AB 2171 would apply to privately operated RCFEs. Expanded personal rights regulations to implement SB 219 would apply to all RCFEs. Regardless of number of residents, all licensees would be required to post personal rights, nondiscrimination notice, and complaint information, and post this information in English and any other language in which five percent or more of the residents can only read that other language.

There will be some administrative costs to licensees of all RCFEs as a result of AB 2171, SB 219, and SB 895. Licensees would need to update admission agreements as they relate to resident personal rights and RCFE procedures as they relate to posting these rights, nondiscrimination notice, and complaint information in other languages read by five percent or more of residents in a RCFE. Licensees would also need to develop and implement a method for collecting information from residents on the language they read and compile this information into a single list that is kept accurate and current. CDSS anticipates that this list will result in negligible cost to licensees since existing regulations in the CCR, Title 22, section 87508 currently require a register of residents, which would be expanded to address languages read by residents. In addition, licensees would need to update the posted resident personal rights, nondiscrimination notice, and complaint information whenever the composition of languages primarily read by residents' changes.

Miscellaneous changes to regulations that do not address resident personal rights will require licensees of RCFEs to not accept or retain residents with unstageable wounds. However, this and other miscellaneous changes do not have any statewide adverse economic impact directly affecting businesses in California.

f) Economic Impact Assessment

In accordance with Government Code section 11346.3(b), CDSS has made economic impact assessments regarding the proposed regulations to implement: AB 2171 (Chapter 702, Statutes of 2014); AB 878 (Chapter 526, Statutes of 1993); SB 219 (Chapter 483, Statutes of 2017); and SB 895 (Chapter 704, Statutes of 2014). CDSS has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, as identified by the following:

Creation or Elimination of Jobs Within the State of California

As a result of the passage of AB 2171 and SB 219, these amendments modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. AB 2171 requires licensees to provide residents and their representatives with written copies of these personal rights, and CDSS is using its broad authority to promulgate regulations to apply this requirement equally to the personal rights in SB 219. As a result of the passage of SB 219, these amendments require that licensees post a nondiscrimination notice, modifying the requirement to post personal rights that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. As a result of the passage of SB 895, these amendments require that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008.

The proposed amendments to regulations in this regulations package will neither create nor eliminate jobs in the State of California. They amend existing regulatory requirements as a result of changes in statutory requirements enacted by the bills specified above. The amendments to regulations are consistent with requirements that have been in existing regulations for a number of years. For this reason, CDSS has determined that the proposed regulations will not have an impact on the creation or elimination of jobs in the State of California.

Creation of New or Elimination of Existing Businesses Within the State of California

As a result of the passage of AB 2171 and SB 219, these amendments modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. AB 2171 requires licensees to provide residents and their representatives with written copies of these personal rights, and CDSS is using its broad authority to promulgate regulations to apply this requirement equally to the personal rights in SB 219. As a result of the passage of SB 219, these amendments require that licensees post a nondiscrimination notice, modifying the requirement to post personal rights that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. As a result of the passage of SB 895, these amendments require that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008.

The proposed amendments to regulations in this regulations package will neither create nor eliminate existing businesses in the State of California. They amend existing regulatory requirements as a result of changes in statutory requirements enacted by the bills specified above. The amendments to regulations are consistent with requirements that have been in existing regulations for a number of years. For this reason, CDSS has determined that the proposed regulations will not have an impact on the expansion or elimination of existing businesses in the State of California.

Expansion or Elimination of Businesses Currently Doing Business Within the State of California

As a result of the passage of AB 2171 and SB 219, these amendments modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. AB 2171 requires licensees to provide residents and their representatives with written copies of these personal rights, and CDSS is using its broad authority to promulgate regulations to apply this requirement equally to the personal rights in SB 219. As a result of the passage of SB 219, these amendments require that licensees post a nondiscrimination notice, modifying the requirement to post personal rights that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. As a result of the passage of SB 895, these amendments require that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent

with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008.

The proposed amendments to regulations in this regulations package will neither expand nor eliminate businesses currently doing business in the State of California. They amend existing regulatory requirements as a result of changes in statutory requirements enacted by the bills specified above. The amendments to regulations are consistent with requirements that have been in existing regulations for a number of years. For this reason, CDSS has determined that the proposed regulations will not have an impact on the expansion or elimination of businesses currently doing business in the State of California.

Benefits of the Regulations

CDSS anticipates that the proposed regulations will benefit the health and welfare of residents receiving care in privately operated RCFEs by ensuring that they have statutory personal rights that are to be observed by licensees. These personal rights are in the spirit of the Resident Bill of Rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. These regulations will allow residents to have additional personal rights in statute that are more responsive to their individual desires and needs, such as the right to: receive a comprehensive description of how residents' needs are evaluated; share a room with any other resident of their choice when there is mutual consent; and prompt access to all of their records. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights. These regulations will also further address the needs of residents who are lesbian, gay, bisexual, and transgender. The personal rights being implemented in these regulations provide essential protection for residents of all RCFEs who are often vulnerable elderly and without advocates or family to ensure that their rights are observed. They are intended to prevent discrimination and promote fairness and equity. The proposed regulations will also ensure that residents, including those who read primarily in other languages, in all RCFEs have equal access to and awareness of personal rights and complaint information so that they can advocate for themselves when necessary. In addition, the proposed regulations will benefit licensee compliance in providing care to residents. There are no additional benefits for worker safety or the state's environment, as the regulations only affect residents in California RCFEs.

Documents Relied Upon

Documents relied upon in proposing these regulations are:

AB 2171 (Chapter 702, Statutes of 2014); AB 878 (Chapter 526, Statutes of 1993); SB 219 (Chapter 483, Statutes of 2017); SB 895 (Chapter 704, Statutes of 2014); California Department of Public Health AFL 08-09 on Mandated Reporting of Staging of Pressure Ulcers, dated May 27, 2008; National Pressure Ulcer Advisory Panel (NPUAP) Press Release on change in terminology from pressure ulcer to pressure injury and updates the stages of pressure injury, dated April 13, 2016; National Pressure Ulcer Advisory Panel (NPUAP), European Pressure Ulcer Advisory Panel (EPUAP) and Japanese Society of Pressure Ulcers (JSPU), et al., as sponsored by Gaymar Industries, Inc. (now Stryker) on Shear: A contributory factor in pressure ulceration slide set on NPUAP website September 21, 2016; and WoundSource article on Identifying Types of Tissues Found in Pressure Ulcers, dated November 20, 2014.

g) Benefits Anticipated from Regulatory Action

CDSS anticipates that the proposed regulations will benefit the health and welfare of residents receiving care in privately operated RCFEs by ensuring that they have statutory personal rights that are to be observed by licensees. These personal rights are in the spirit of the Resident Bill of Rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. These regulations will allow residents to have additional personal rights in statute that are more responsive to their individual desires and needs, such as the right to: receive a comprehensive description of how residents' needs are evaluated; share a room with any other resident of their choice when there is mutual consent; and prompt access to all of their records. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights, which includes a clarification and strengthening of a personal right, in existing regulations. These regulations will also further address the needs of residents who are lesbian, gay, bisexual, and transgender. The personal rights being implemented in these regulations provide essential protection for residents of all RCFEs who are often vulnerable elderly and without advocates or family to ensure that their rights are observed. These personal rights are intended to prevent discrimination and promote fairness and equity. The proposed regulations will also ensure that residents, including those who read primarily in other languages, in all RCFEs have equal access to and awareness of personal rights and complaint information so that they can advocate for themselves when necessary. In addition, the proposed regulations will benefit licensee compliance in providing care to residents. These proposed regulations have no direct benefit to worker safety or the state's environment, as the proposed regulations only affect residents in RCFEs.

h) and i) No changes

j) Testimony and Response (July 14, 2017 through August 30, 2017)

CDSS noticed these regulations to the public for a 45-day comment period in the Office of Administrative Law California Regulatory Notice Register, Register 2017, No. 28-Z, dated July 14, 2017. These regulations were considered as Item #1 at a public hearing held on August 30, 2017, in Sacramento, California. The public comment period closed at 5:00 p.m. on August 30, 2017.

The following written testimony was received during the 45-day comment period:

Selena Coppi Hornback, Associate Director of Public Policy, California Assisted Living Association (CALA)

1. Section 87109(b)

Comment:

The Department changed “responsible persons” to “representatives” in 87468 (a)(1)(G), (H), and (I), and Section 87468 (b), etc., but not 87109 (b). Although “responsible person has been defined in 87101 (r)(6) to mean “representative,” it would make sense to apply consistency throughout by changing that section as well.

CALA suggests changing “responsible persons” to “representative” for consistency and clarity.

The licensee shall notify the licensing agency and all residents receiving services, or their ~~responsible persons~~ representative, in writing as soon as possible and in all cases at least ~~sixty (60)~~ thirty (30) days prior to ~~the effective date that any change in ownership of the facility occurs as required by any of the events specified in~~ Health and Safety Code section 1569.191(a)(1).

Response:

The Department is changing "responsible persons" to "representative" for consistency with this change in other sections addressed by this regulation package and clarity. It was our oversight to not make this change in this section.

The Department is amending Section 87109(b), along with making other modifications to the section, to read:

- (b) The licensee shall notify the licensing agency and all residents receiving services, or their ~~responsible persons~~ *representatives*, in writing as soon as possible and in all cases at least ~~sixty (60)~~ thirty (30) days prior to ~~the effective date that any change in ownership of the facility occurs as required by any of the events specified in Health and Safety Code section 1569.191(a)(1)~~ *the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer.*

2. Section 87468(a)

Comment:

Resident rights are very important, but there are redundancies in the newer personal rights listed in statute and the older rights in regulation. Having two separate lists with redundancies is cumbersome, confusing, and clunky. A few examples of rights that are the same both in statute and in regulation:

- To be accorded dignity in their personal relationships with staff, residents, and other persons.
- To be accorded safe, healthful, and comfortable accommodations, furnishings, and equipment.
- To move from a facility.

CALA suggests combining the regulatory and statutory rights into one comprehensive list of rights for privately operated RCFEs that removes the redundancies.

Response:

The Department agrees that it is necessary to make changes to further clarify statutory and regulatory personal rights.

The Department is amending the existing CCR, Title 22, Section 87468 to maintain it as a lead section for personal rights. We are relocating the existing regulatory personal rights for residents in publicly operated RCFEs to a new Section 87468.1. We are also placing the statutory personal rights for residents in privately operated RCFEs, which supersede the existing regulatory personal rights, in a new Section 87468.2. In addition, we are placing statutory personal rights for residents in all facilities, including those who are LGBT, in a new Section 87468.3.

These changes will improve clarity for licensees, residents, and residents' representatives in observing and understanding residents' rights in all RCFEs by removing redundancies. They will preserve existing CCR, Title 22, Section 87468 personal rights for residents in publicly operated RCFEs. They will also observe the intent of AB 2171 (Chapter 702, Statutes of 2014) that residents in privately operated RCFEs have new statutory personal rights, which are inclusive of existing personal rights specified in Section 87468. In addition, they will observe the intent of SB 219 (Chapter 483, Statutes of 2017) that residents, including residents who are LGBT, have new statutory personal rights.

3. Section 87468(c)(2)

Comment:

CALA believes it is important for residents to not only know their rights, but to know how to file a complaint should they need to. However, CALA has general concerns about the increasing amount of wall postings, especially when it is duplicative. The poster is required to be 20" x 26" in size, which is large. RCFEs are already required to post the eight pages of rights which currently contain the phone number for the Department of Social Services (DSS), in order to file a complaint, and the Long-Term Care Ombudsman. Requiring more and more information on the walls dilutes what is important by overwhelming people with information, and makes it difficult for licensees to balance the need to meet government posting requirements and maintain a homelike environment for their residents. We would ask that DSS take a global approach to adding new posters and think about the totality and the amount of room a facility needs in order to hang all required posters before adding new requirements and look at what could be eliminated and addressed in a more productive way.

Response:

The Department does not have the authority to change the number of postings, which are required by statute. We hope that this concern may be somewhat mitigated by our consolidation of personal rights. All of the personal rights that apply to residents in publicly operated RCFEs are relocated to a new CCR, Title 22, Section 87468.1. All of the personal rights that apply to residents in privately operated RCFEs are placed in a new CCR, Title 22, Section 87468.2. All of the personal rights that apply to residents in all facilities, including residents who are LGBT, are placed in a new CCR, Title 22, Section 87468.3. This consolidation requires that postings be based on whether a RCFE is publicly or privately operated.

Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform (CANHR)

CANHR submitted its comments on this regulation package to CDSS in two separate letters. The following comments are on various sections.

RCFE Personal Rights and Miscellaneous, ORD #1115-13
Sections Other Than Proposed Section 87468(a)(2)

1. Section 87109(b)

Comment:

CANHR recommends that the subsection be amended as follows:

- (b) The licensee shall notify the licensing agency and all residents receiving services, or their ~~responsible persons~~ representatives, ~~of the licensee's intent to sell the facility,~~ in writing as soon as possible and in all cases at least ~~sixty (60)~~ thirty (30) days prior to the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer. ~~the effective date that any change in ownership of the facility occurs as required by any of the events specified in Health and Safety Code section 1569.191(a)(1).~~

CANHR's proposed amendment above accurately reflects the language and purpose of Health & Safety Code section 1569.191(a)(1) with respect to notification and the notification time period. Section 1569.191(a)(1) sets forth two events triggering notification, "the transfer of the property or business" or "the time that a bona fide offer is made." Neither the current regulation, nor the proposed regulation, accurately describe the statutory notification time period, insofar as they both fail to describe the potentially longer time period required by Health & Safety Code section 1569.191(a)(1) if a bona fide offer is made more than 30 days prior to the transfer of the property or business.

Rather than setting forth the two triggering events and corresponding time periods, the proposed regulation merely references the authorizing statute. Thus, it requires licensing staff, licensees, consumers and advocates to go to another location to determine the requisite information, instead of clarifying in regulation the timeframe for licensees to provide notification.

CANHR's proposed amendment also replaces the term "responsible persons" with the word "representatives" for consistency with other regulations.

Response:

The Department is replacing the modification we made after the first public hearing, which read " any of the events specified in Health and Safety Code

section 1569.191(a)(1)" with the language proposed by CANHR. This change is consistent with and specific to the two triggering events, "the transfer of the property or business" or "the time that a bona fide offer is made," and their notification timeframes specified in Health and Safety Code section 1569.191(a)(1).

The Department is changing "responsible persons" to "representative" for consistency with this change in other sections addressed by this regulation package and clarity. It was our oversight to not make this change in this section.

The Department is amending Section 87109(b), along with making other modifications to the section, to read:

- (b) The licensee shall notify the licensing agency and all residents receiving services, or their ~~responsible persons~~ *representatives*, in writing as soon as possible and in all cases at least ~~sixty (60)~~ thirty (30) days prior to ~~the effective date that any change in ownership of the facility occurs as required by any of the events specified in Health and Safety Code section 1569.191(a)(1)~~ *the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer.*

2. Section 87468(a)(1)(D)

Comment:

CANHR recommends that the subsection be amended as follows:

- (D) To be informed by the licensee of the provisions of law regarding complaints and of procedures to confidentially register complaints, including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency, and how to contact the Community Care Licensing Division of the California Department of Social Services, and the long-term care ombudsman regarding grievances against the facility. ~~This includes the right to contact the agencies specified in Health and Safety Code section 1569.885.~~

A resident's right to file grievances against licensees to resolve disputes is fundamental and unequivocal, and should be simple and straightforward. CANHR's proposed amendment specifically names the two agencies set forth in Health & Safety Code section 1569.269(a)(12) whom residents have the right to contact regarding grievances. Inexplicably, the statute referenced by the proposed regulation links admission agreement language instead of the residents' statutory bill of rights, and fails to name the two agencies. To ensure

the clarity required by the Administrative Procedures Act (APA) at Government Code section 11349(c), the regulation should specifically set forth the agencies to whom residents can address grievances, and not reference a statute describing the contents of admission agreements.

Response:

The Department is replacing the modification it made after the first public hearing, which read the agencies specified in the personal right in Health and Safety Code section 1569.269(a)(12) for clarity.

The personal right is being relocated from Section 87468(a)(1)(D) to a new Section 87468.1(a)(4), to read:

- (4) *To be informed by the licensee of the provisions of law regarding complaints and of procedures for confidentially registering complaints, including, but not limited to, the address and telephone number for the complaint receiving unit of the Department, and how to contact the Community Care Licensing Division of the California Department of Social Services, and the long-term Care ombudsman regarding grievances in regard to the facility.*

3. Handbook Section 87468(a)(1)(J)

Comment:

CANHR recommends that the Department maintain this Handbook section setting forth the text of Health and Safety Code section 1569.313 instead of requiring licensing staff, licensees, consumers and advocates to go to another location to access the referenced, critical policy and law encouraging family involvement with residents. The Department's Manual of Policies and Procedures (MPP) is replete with the text of referenced statutes in its Handbook, and including the text of this statute will provide necessary clarity, consistency and guidance to further the statutory intent of family involvement with residents.

Response:

The Department is maintaining handbook of Health and Safety Code section 1569.313 for ease of use.

The handbook is being relocated from Section 87468(a)(1)(J) to a new Section 87468.1(a)(10), to read:

- (10) *To be informed of the licensee's policy concerning visits and other communications with residents, according to Health and Safety*

Code section 1569.313.

HANDBOOK BEGINS HERE

Health and Safety Code section 1569.313 provides:

"Each residential care facility for the elderly shall state, on its client information form or admission agreement, and on its patient's rights form, the facility's policy concerning family visits and other communication with resident clients and shall promptly post notice of its visiting policy at a location in the facility that is accessible to residents and families.

The facility's policy concerning family visits and communication shall be designed to encourage regular family involvement with the resident client and shall provide ample opportunities for family participation in activities at the facility."

HANDBOOK ENDS HERE

4. Handbook Section 87468(a)(2)

Comment:

CANHR recommends that the Department maintain this Handbook section setting forth the text of Health and Safety Code section 1569.269, especially since the Department's proposed regulation references the statute and does not identify any of the 30 fundamental personal rights contained therein. Insofar as the Department has chosen not to reconcile the statute in its regulation, including the text of this statute is necessary to provide clarity and guidance to licensing staff, licensees, consumers and advocates, who would otherwise have to go to another location to determine their personal rights.

Response:

The Department is not maintaining handbook of Health and Safety Code section 1569.269 in Section 87468 since it is placing statutory personal rights for residents in privately operated RCFEs into regulation text in a new Section 87468.2 for clarity.

5. Section 87468(b)

Comment:

CANHR believes that the phrase “these rights” is ambiguous, and recommends that the Department specify the rights to which it is referring. Numerous rights are referenced in the regulation and the various statutes cited by the regulation, and it is unclear which set of rights are the subject of this subsection.

Response:

The Department is adding language to specify the personal rights that a resident and the resident's representative must be advised and given a copy of, for clarity.

The Department is amending Section 87468(b), along with making other modifications to the section, to read:

- (b) *At the time the admission agreement is signed, a resident and the resident's ~~responsible person or conservator~~ representative shall be personally advised of and given a copy of a list of these rights. The licensee shall have each resident and the resident's ~~responsible person or conservator~~ representative sign a copy of these rights, and the signed copy shall be included in the resident's record.*
- (1) *The personal rights of residents specified in Sections 87468.1 or 87468.2, as applicable to the facility, and the personal rights specified in Section 87468.3.*
 - (A) *The licensee shall have each resident and the resident's representative sign a copy of these rights, and the signed copy shall be included in the resident's record.*

6. Section 87468(c)

Comment:

CANHR believes that the phrase “personal rights” is ambiguous, and recommends that the Department specify the rights to which it is referring. Numerous rights are referenced in the regulation and the various statutes cited by the regulation, and it is unclear which set of rights are the subject of this subsection.

Response:

The Department is adding language to specify the personal rights that must be posted in a RCFE, for clarity.

The Department is amending Section 87468(c), along with making other modifications to the section, to read:

(c) Licensees shall prominently post personal rights, nondiscrimination notice, and complaint information in areas accessible to residents, and their relatives, responsible persons, or conservators, representatives, and the public.

(1) *The personal rights of residents specified in Sections 87468.1 or 87468.2 shall be posted as applicable to the facility. The personal rights specified in Section 87468.3 shall be posted in all facilities.*

Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform (CANHR)

CANHR submitted its comments on this regulation package to the California Department of Social Services in two separate letters. The following comments are only regarding Section 87468(a)(2).

RCFE Personal Rights and Miscellaneous, ORD #1115-13 Proposed Section 87468(a)(2)

Comment:

CANHR is submitting the following comments on the Department's proposal to incorporate the Resident's Bill of Rights established by AB 2171 (Wieckowski, 2014) into the regulation governing Personal Rights (22 CCR §87468) solely by reference. CANHR strongly objects to this proposal and urges the Department to reinstate its original plan to fully conform the regulation on Personal Rights to the statutory Resident's Bill of Rights established by AB 2171.

This letter solely addresses our recommendation to fully conform the regulation on Personal Rights to the statutory Resident's Bill of Rights for RCFE residents. We are submitting comments on other aspects of the proposed regulations by separate letter.

As the co-sponsor of AB 2171, CANHR worked closely with its author, Senator Bob Wieckowski, and the Legislature in shaping and passing this landmark legislation. AB 2171 – the cornerstone of the RCFE Reform Act of 2014 – was enacted in response to the escalating crisis in care in California RCFEs at a

time when repeated scandals exposed the dehumanizing conditions and appalling mistreatment residents faced in many facilities. The legislation was widely supported and praised for its intent to ensure RCFE residents received dignified care and for the fundamental civil liberties it established.

In adopting AB 2171, the Legislature was fully aware that RCFE residents lacked basic rights. Previously, resident rights were mostly limited to the regulation on Personal Rights (§87468), a 1985 era regulation that is outdated and woefully inadequate.

It has always been our understanding and expectation that the regulatory section on Personal Rights would be comprehensively rewritten to be fully consistent with the Resident's Bill of Rights established by AB 2171. Until now, the Department clearly shared our understanding that the Personal Rights regulation must be fully harmonized with the law.

In its Initial Statement of Reasons (ISOR) issued in connection with the July 27, 2016 hearing on this regulation package, the Department stated:

"These personal rights are being incorporated by reference in this "Phase I" regulations package, which will be followed by more extensive changes to resident personal rights regulations to incorporate personal rights for all RCFEs in a forthcoming "Phase II" regulations package. " [7/27/16 ISOR, p. 7.]

With almost no explanation or justification, the Department completely reversed course in the recently issued ISOR, stating:

"We no longer plan to complete a Phase 2 regulations package since we have determined that it is not necessary to further clarify the rights." [8/30/17 ISOR, p. 28.]

The proposed regulations now address AB 2171 only through a brief reference stating *"residents in privately operated facilities shall also have rights specified in Health and Safety Code section 1569.269."* If adopted, this approach would relegate one of the most significant reforms in the history of RCFEs to little more than a footnote.

The Department's reversal caught us completely by surprise. In our communications with the Department about implementation of AB 2171, it has always expressed its intent to modernize §87468 so that it is fully consistent with the law.

It is Necessary to Further Clarify the Rights

The Department's statement that it is not necessary to further clarify the rights is wrong.

Section 87468 has been little changed for decades. While its rights have remained constant, the role of RCFEs and the needs of their residents have rapidly evolved. Some of the rights in 87468 are outdated and many fundamental rights are missing. It makes no sense to leave §87468 virtually as is after the Legislature established a modern bill of rights for residents via AB 2171. Section 87468 must be amended or replaced to reconcile, clarify, harmonize and merge its provisions with the Resident's Bill of Rights so it provides a comprehensive and expansive statement of resident rights that will be fully understood, respected and enforced. Nothing less is appropriate or acceptable.

The need to clarify and harmonize the rights is obvious due to the outdated nature of some of the rights within §87468. For example, the Resident's Bill of Rights contains a much stronger right to be free from abuse than does §87468.

87468(a)(3). To be free from corporal or unusual punishment, humiliation, intimidation, mental abuse, or other actions of a punitive nature, such as withholding of monetary allowances or interfering with daily living functions such as eating or sleeping patterns or elimination.

1569.269(a)(10). To be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and verbal, mental, physical or sexual abuse.

Unlike the statutory provision, §87468(a)(3) does not prohibit neglect, financial exploitation, involuntary seclusion and verbal, physical or sexual abuse. The statutory right is comprehensive, while §87468(a)(3) is outdated and incomplete. If the Department follows its plan, anyone who reads §87468(a)(3) will be misled about the scope of the right to be free from abuse.

The same is true for other rights, such as the right of residents to manage their financial affairs. Section 87468 is mostly silent on this right, only giving residents the right to keep and spend their own money. The statutory right is far more protective, maintaining the right to keep and spend money, while also giving residents the following right:

To manage their financial affairs. A licensee shall not require residents to deposit their personal funds with the licensee. Except as provided in approved continuing care agreements, a licensee, or a spouse, domestic partner, relative, or employee of a licensee, shall not do any of the following:

- (A) Accept appointment as a guardian or conservator of the person or estate of a resident.*

- (B) *Become or act as a representative payee for any payments made to a resident, without the written and documented consent of the resident or the resident's representative.*
 - (C) *Serve as an agent for a resident under any general or special power of attorney.*
 - (D) *Become or act as a joint tenant on any account with a resident.*
 - (E) *Enter into a loan or promissory agreement or otherwise borrow money from a resident without a notarized written agreement outlining the terms of the repayment being given to the resident.*
- 1569.269(a)(29)

These examples demonstrate that the existing rights in §87648 do need to be clarified and conformed to the statute.

In addition to clarifying rights, the Department must make the regulation consistent with the law. Many of the most important rights established by AB 2171 do not exist in §87468. The statutory Resident's Bill of Rights gives residents critical rights on privacy, confidentiality, quality of care, adequacy of staffing, accommodation of needs, room and roommate choices, selection of health care providers, access to their records and many other rights that are missing from §87468. The Department must add these missing rights to the regulations in order to ensure the regulation is consistent with the law.

The regulation must also address provisions of AB 2171 beyond the 30 rights established at 1559.269(a). The Resident's Bill of Rights contains other important protections, including, but not limited to, a prohibition on discrimination, a ban on contract provisions waiving benefits or rights, and a statement that residents shall continue to enjoy all of their civil and legal rights.

AB 2171's Purpose Will Be Jeopardized if its Provisions Are Not Put Into Regulation

The Title 22 regulations are the guiding authority for Department staff, licensees, consumers and advocates. For all practical purposes, RCFE requirements must be in the regulations or they will be little known and poorly enforced. If the Resident's Bill of Rights is not fully included within Title 22, AB 2171 will not achieve its purpose and this major reform act will be marginalized. Community Care Licensing's entire regulatory enforcement system is built on enforcing the regulations within Title 22. The Key Indicator Tools (KITs) that it uses to direct its RCFE inspections focuses almost exclusively on regulatory requirements. Its most commonly cited RCFE deficiencies are virtually all based on violations of the regulations. The Evaluator Manual, which CCL staff use to guide their investigations, interprets the regulations, but not statutory requirements. Its website provides abundant resource information on the regulations, but very little on laws governing RCFEs. On occasion, licensing

program analysts have told us that if a requirement is not in Title 22, they do not enforce it.

Given this reality, it is not surprising that so many RCFE providers know little about the statutory requirements. CCL is certainly aware that many licensees lack even a basic understanding of California laws that apply to them. Many, if not most, providers rely solely on Title 22 to govern their care practices.

We are also concerned that, historically, CCL has paid relatively little attention to resident rights during inspections and investigations. The KIT does not focus on resident rights despite their fundamental importance. Violations of resident rights are rarely among the most commonly cited deficiencies.

Among other objectives, AB 2171 aimed to make resident rights a higher priority within CCL's regulatory culture and make CCL more responsive to residents when RCFEs violate their rights. These objectives will not be achieved if the Department buries the AB 2171 requirements by reducing this landmark reform act into a single reference within the regulations.

The Legislature Expects the Department to Issue Regulations to Implement AB 2171

All of the fiscal analyses of AB 2171 while it was before the Legislature, including the final floor analyses by the Assembly on August 26, 2014, stated that DSS would face one-time costs of about \$250,000 to issue regulations and review RCFE plans of operation. There was never any question about the need to conform the regulations to the law. Indeed, all of our conversations with Department officials up until this point, as well as the earlier statements within the original ISOR for this regulatory package, indicated that the Department recognized the need to make the regulations consistent with the law and that it planned to do so.

The Administrative Procedures Act Allows the Department to Conform the Regulations to the Law

Although the ISOR does not explain why the Department is now proposing to abandon its plan to implement a "Phase 2" rewrite of §87468, Department officials have told us that listing the statutory rights within the regulation might violate the "nonduplication" standard of the Administrative Procedures Act (APA) at Government Code §11349(f).

We strongly disagree with this position. While we understand that the APA discourages the duplication of statutory language in regulations – this is a "guiding" principal of the APA, and not mandatory. The APA expressly states the nonduplication standard *"is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the*

duplication is necessary to satisfy the clarity standard in [Section 11349.1(a)]. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.” Government Code §11349(f).

Clearly, in this case, conforming the personal rights in the regulations to the resident rights in the statute would not violate the APA because it is necessary to provide clarity and also to distinguish between those rights afforded to residents in public facilities versus private RCFEs. As we stated earlier, §87468 must be amended or replaced to reconcile, clarify, harmonize and merge its provisions with the Resident’s Bill of Rights so it provides a comprehensive and expansive statement of resident rights that will be fully understood, respected and enforced. There is nothing “indiscriminate” about this task.

Government Code §11349(c) states *“clarity means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected them.”* The persons most directly affected by these regulations are elderly RCFE residents, many of whom suffer from cognitive impairments and have compromised abilities to think and learn. The “clarity” standard is clearly violated when persons with these vulnerabilities are put in the position, as they are now, where they have to read and compare two overlapping, separate sets of rights to determine what their rights are.

The Government Code also establishes a “consistency” standard, which it defines as *“being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.”* Section 11349(c). Almost by definition, the existing regulation is not in harmony with AB 2171. The law was created because the Personal Rights regulation is outdated, incomplete and ineffective. CANHR and others who worked so hard to enact AB 2171 strongly object to the idea that a mere reference to a portion of the statutory Resident’s Bill of Rights could make the regulation harmonious with the law.

The Department must also consider the Legislature’s intent in enacting AB 2171, which is stated in Health and Safety Code section 1569.261 as follows:

- (a) *It is the intent of the Legislature in enacting this article to adopt fundamental rights for all persons residing in a residential care facility for the elderly, as defined in Section 1569.2, and to ensure that facilities respect and promote these rights.*
- (b) *In establishing this bill of rights, the Legislature intends that persons residing in residential care facilities for the elderly be treated with dignity, kindness, and respect, and that their civil liberties be fully honored.*
- (c) *A central purpose of the bill of rights is to strengthen a resident’s right to make choices about his or her care, treatment, and daily life in the facility and to ensure that the resident’s choices are*

- respected. The Legislature intends to enhance each resident's autonomy and ability to make decisions concerning his or her life.*
- (d) *The Legislature also intends that each residential care facility for the elderly provide a safe, comfortable, and homelike environment for its residents and that it protect residents from physical or mental abuse, neglect, exploitation, or endangerment.*

For all of the reasons stated above, the nonduplication policy of the APA does not prohibit the Department from conforming the regulation to the statutory provisions established by AB 2171. The opposite is true. For the sake of clarity, consistency and to fulfill the ambitious legislative intent of AB 2171, the Department must take this action.

Response:

The Department agrees that it is necessary to make changes to further clarify statutory and regulatory personal rights.

The Department is amending the existing CCR, Title 22, Section 87468 to maintain it as a lead section for personal rights. We are relocating the existing regulatory personal rights for residents in publicly operated RCFEs to a new Section 87468.1. We are also placing the statutory personal rights for residents in privately operated RCFEs, which supersede the existing regulatory personal rights, in a new Section 87468.2. In addition, we are placing statutory personal rights for residents in all facilities, including those who are LGBT, in a new Section 87468.3.

These changes will improve clarity for licensees, residents, and residents' representatives in observing and understanding residents' rights in all RCFEs by making statutory personal rights specific in regulation. They will preserve existing CCR, Title 22, Section 87468 personal rights for residents in publicly operated RCFEs. They will also observe the intent of AB 2171 (Chapter 702, Statutes of 2014) that residents in privately operated RCFEs have new statutory personal rights. In addition, they will observe the intent of SB 219 (Chapter 483, Statutes of 2017) that residents, including residents who are LGBT, have new statutory personal rights.